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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225722
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEVE JACKSON GAMES INCORPORATED
Opposer,

v.

INXILE ENTERTAINMENT, INC.
Applicant.

Opposition No. 91225722
Serial No. 86/702,458

OPPOSER’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and TBMP § 528, Steve Jackson Games Incorporated (“Opposer”) files this Motion for Summary Judgment, as follows:

I. SUMMARY OF MOTION

Opposer, Steve Jackson Games Incorporated, is a pillar of the gaming community. Gaming and hobby stores have sold Opposer’s games for decades, and its products can be purchased from national chains as well. This proceeding involves one of Opposer’s longest-running properties, AUTODUEL, with products been sold continuously since 1982. Applicant, inXile Entertainment, Inc. (“Applicant”), after learning that Opposer had no pending filing for its AUTODUEL mark, rushed to the USPTO in an attempt to slip under the radar and preclude Opposer from registering its AUTODUEL mark or using the mark for computer games, such as successor to Opposer’s classic computer game, AUTODUEL.

Applicant improperly seeks to register “AUTODUEL” for “Providing online downloadable computer and video game programs; Interactive video game programs.” It is undisputed that in the wake of Applicant’s filing of Application Serial No. 86702458, both the gaming media and consumers actually confused Applicant’s filing as being affiliated with Opposer and incorrectly thought that Applicant’s AUTODUEL game would be related to Opposer’s earlier-released 1985 video game, AUTODUEL.

In knowing violation of Opposer’s common law trademark rights, Applicant now seeks to eventually develop and offer a *post-apocalyptic vehicle combat game* under the AUTODUEL mark. Since 1982, Opposer has continuously used its AUTODUEL mark in connection with a variety of *post-*

apocalyptic vehicle combat games, supplements, and accessories. Today, consumers can buy from Opposer's Warehouse23.com online store no less than 50 different AUTODUEL products, from the GURPS® Autoduel™ role-playing world book and AADA Road Atlas game supplements, to the Autoduel™ America maps and the Autoduel™ Quarterly game supplements. The similarities between Opposer's actual use and Applicant's proposed use are glaring, and that is without even considering that Opposer once licensed used the AUTODUEL mark for a well-known *post-apocalyptic computer role playing game* with the main feature being *vehicle combat* (a use that Applicant had knowledge of).

Applicant will argue that because the products currently sold by Opposer are digital copies of these game materials, and the materials have been largely unchanged since their original production, that somehow the ongoing sales of these products confers no rights upon Opposer. Not only is this position illogical, but it is contrary to the very foundation of trademark law in the United States—namely, that trademark owners obtain and maintain rights through the use of their trademarks in commerce. The marks at issue in this case are identical, the goods and trade channels are highly related, and the mere filing of Applicant's application undisputedly resulted in actual consumer confusion. This is an easy case—the likelihood of confusion that would result from Applicant's proposed use of AUTODUEL is unavoidable.

Further, Applicant made it abundantly clear during discovery that it had no *bona fide* intent as of its filing date for AUTODUEL for "Providing online downloadable computer and video game programs; Interactive video game programs." Applicant has produced no documents that pre-date the filing. Applicant had no product plans, business plans, or research at that time. Today, fifteen months after filing the application, Applicant has only vague ideas for a potential computer/video game. Applicant merely liked the name, at least in part because of Opposer's AUTODUEL computer game, and wanted to keep anyone else from registering it. In other words, Applicant opportunistically sought to reserve potential use of the AUTODUEL mark for when it might, sometime in the future, decide to develop a game with which to use the mark. Applicant cannot establish a *bona fide* intent at the time of filing.

Applicant respectfully requests that the Board find that there is no genuine dispute of material fact relating to: (i) Opposer's standing; (ii) Applicant's lack of *bona fide* intent to use the AUTODUEL

mark; (iii) Opposer's priority; (iv) the likelihood of confusion under Section 2(d); and (v) Applicant's affirmative defenses.

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III. SUMMARY JUDGMENT EVIDENCE

Opposer submits the following evidence in support of its Motion for Summary Judgment:

- Exhibit A – Declaration of Phil Reed, the CEO of Opposer Steve Jackson Games, Incorporated (hereinafter, the “**Reed Decl.**”), which includes details and exhibits pertaining to: (a) Opposer’s adoption and use of the AUTODUEL mark in connection with a wide range of gaming products; (b) Opposer’s business, products, and trade channels, demonstrating the very close connection between tabletop games and computer/video games; (d) actual confusion; (e) Opposer’s policing of its mark; and (f) the inadvertent cancellation of filings with the USPTO.

- Exhibit B – Declaration of Brandon M. Ress, counsel for Opposer (hereinafter the “**Ress Decl.**”), which includes details and exhibits pertaining to: (a) instances of actual confusion; (b) Applicant’s discovery responses and document production; (c) deposition testimony of Applicant’s witnesses; and (d) Opposer’s USPTO filings. In particular, please note the following:

- Exhibit 43 contains excerpts from the 30(b)(6) and individual deposition of Applicant’s CEO, Frank Brian Fargo, that are not designated under the standard protective order and will be referenced as “**Fargo Tr.**” All excerpts prior to page 171:12 are from Mr. Fargo’s testimony as 30(b)(6) witness for Applicant. Exhibit 44 contains excerpts from the 30(b)(6) deposition of Mr. Fargo that are designated ATTORNEYS’ EYES ONLY and will be referenced as “**Fargo AEO Tr.**”
- Exhibit 45 contains excerpts from the individual deposition of Michael “Maxx” Kaufman, employee of Applicant and co-founder of Pixelbionic, that are not designated under the standard protective order. This exhibit and excerpts will be referenced as “**Kaufman Tr.**” Exhibit 46 contains excerpts from Mr. Kaufman’s individual deposition that are designated ATTORNEYS’ EYES ONLY and will be referenced as “**Kaufman AEO Tr.**”

IV. BACKGROUND FACTS

Opposer is a publisher of games, books, and gaming-related magazines. Since 1980, Opposer has published over 100 different titles, including board games, role playing games, card games, dice games, and war games, as well as supplements for its games (materials that add new features, rules, settings, etc. for use with the base games) and a wide range of accessories, including miniatures, plush figures, and clothing. Opposer also offers mobile apps for use with its tabletop games, as well as stand-alone online and mobile games. Reed Decl. at ¶2.

Steve Jackson Games first released an AUTODUEL product in the United States in 1982 when it began selling miniature figures bearing the mark AUTODUEL! for its Car Wars™ board game. Based on this use, Opposer's predecessor (Steven G. Jackson d.b.a. Steve Jackson Games) registered the mark AUTODUEL! with the USPTO in connection with "Miniature Figures for Use with a Parlour Game Sold Separately", Registration No. 1,293,028, issued September 4, 1984. The registration was assigned to Opposer as of October 1, 1984. Opposer's Reg. No. 1,293,028 was eventually cancelled by the USPTO as of June 11, 2005. *Id.* at ¶3.

Car Wars™ is a vehicular combat board game where players build vehicles with weapons, armor, and more, and then engage in combat in a post-apocalyptic setting. Opposer has launched a large number of supplements and accessories for the Car Wars game, including a stand-alone Car Wars™ The Card Game and a recent Kickstarter campaign and product launch for Car Wars Arenas, a new release of arena maps from prior Car Wars supplements. *Id.* at ¶4.

Like the AUTODUEL miniature figures, a number of Opposer's AUTODUEL products are supplements for its Car Wars™ game, and all of its AUTODUEL products involve vehicular combat and inhabit the same post-apocalyptic setting fifty years in the future. For instance, Opposer's Autoduel™ Quarterly provides campaign seeds, scenarios, vehicles, mock advertisements, new weapons and accessories, and fiction relating to the Car Wars/Autoduel world. *Id.* at ¶5.

Opposer is also the creator of the Generic Universal RolePlaying System, or GURPS. GURPS® is a tabletop role-playing game system designed to allow for play in any game setting. GURPS®

Autoduel™ is a role-playing “worldbook” that provides gamers with the rules, background, setting, and details necessary to conduct role-playing games using the GURPS system and set in the post-apocalyptic Car Wars setting. Several of the AUTODUEL products sold by Opposer are supplements for both Car Wars™ and GURPS® Autoduel™. *Id.* at ¶6.

Opposer has released a wide range of titles under the AUTODUEL brand, as well as additional supplements which bear the AUTODUEL mark. The chart below summarizes these products, along with physical and digital release dates:

<u>Product</u>	<u>Description</u>	<u>Initial Physical Release</u>	<u>Initial Digital Release</u>	<u>Reed Decl. Exhibit & Bates Nos.</u>
Autoduel!® miniatures	miniature figurines of vehicles; registration has since expired	1982	n/a	<u>Exhibit 2</u> SJG002015-2016
Autoduel™ Champions	role-playing game in Car Wars™ setting with superheroes from Champions game, the latter of which was licensed	1983	n/a	<u>Exhibit 3</u> SJG001092
Autoduel™ Quarterly	quarterly supplement for Car Wars, and later, GURPS® Autoduel™, featuring campaign seeds, scenarios, vehicles, mock advertisements, new weapons and accessories, and fiction relating to Car Wars world	1983-1993 (40 issues)	2005	<u>Exhibit 4</u> SJG002018
Autoduel™ Play-By-Mail	play-by-mail version of Car Wars, operated under license by Prometheus Games	1984	n/a	<u>Exhibit 5</u> SJG000254 (ad for service)
Autoduel™ video game	vehicular combat video game, based on Car Wars, released by Origin Systems under license from Opposer	1985-1988 (multiple platforms)	n/a	<u>Exhibit 6</u> SJG000239-240 (game cover and ad shown)
GURPS® Autoduel™ (1 st Edition)	role-playing game in the same universe as Car Wars, using Opposer’s GURPS® role-playing game system	1986	n/a	<u>Exhibit 7</u> SJG001095
AADA™ Road Atlas	game supplement for Car Wars and	1986-1991	2014	<u>Exhibit 8</u>

	GURPS Autoduel	(7 volumes)		SJG001912, 21, 30, 39, 48, 57, 66
GURPS® Autoduel™ : Car Warriors	game supplement for GURPS Autoduel	1987	n/a	<u>Exhibit 9</u> SJG001099
Zombietown USA	game supplement for GURPS Autoduel	1988	2006	<u>Exhibit 10</u> SJG001103
Autoduel™ America map	two full-color maps for use with Car Wars and GURPS Autoduel	1989	2013	<u>Exhibit 11</u> SJG001981
Autoduel™ Online	announced online video game under development by licensee VictorMaxx in 1995-1996, but ultimately cancelled	n/a	n/a	n/a
GURPS® Autoduel™ (2 nd Edition)	new edition of role-playing game in the same universe as Car Wars, using Opposer's GURPS role-playing game system	1996/1997	2008	<u>Exhibit 12</u> SJG000919

Reed Decl. at ¶7. Opposer's marks and designations incorporating AUTODUEL, including without limitation, AUTODUEL, AUTODUEL QUARTERLY, GURPS AUTODUEL, and AUTODUEL AMERICA, are collectively referred to herein as the AUTODUEL Mark.

Opposer sold its physical AUTODUEL gaming products throughout the U.S. every year from 1982 until 2012, with the exception 1994-1995, when no records were available. *Id.* at ¶¶7, 9.¹ The period from 1994-1995 represents time before the announcement of a newly updated GURPS® Autoduel™ in 1996 and release in 1997. *Id.* at ¶9. It is a common practice of Opposer to temporarily list products as out-of-stock between different editions so that stock of an earlier edition can be cleared from its warehouse and from retailers' stock before a new edition is released. *Id.* Opposer has sold well over 350,000 AUTODUEL-branded physical game products. *Id.* at ¶12. The suggested retail price for these products ranged from \$2.50 for early issues of Autoduel Quarterly to \$19.95 for GURPS Autoduel. Opposer

¹ The Reed Declaration contains numerous additional sales-related details, as well as exhibits showing sales figures from 1983 to the present, for Opposer's AUTODUEL products. *See* Reed Decl. at ¶¶7-24 and Exs. 13-14.

continued to sell physical AUTODUEL-branded game products until 2012, when it sold its remaining stock. *Id.*

Opposer has continuously sold digital gaming products under the AUTODUEL Mark in the United States since 2005, and has expanded the collection of products bearing the AUTODUEL Mark over time with digital product releases of Autoduel™ Quarterly (2005), Zombietown USA supplement (2006), GURPS® Autoduel™ Classic (2008), Autoduel™ America maps (2013), and AADA Road Atlases (2014). Reed Decl. at ¶19. Today, consumers can visit Opposer's Warehouse23.com online retail store and purchase no less than 50 different products² bearing the AUTODUEL Mark. *Id.* at ¶20. Consumers who purchase digital products from Warehouse23.com benefit not only by saving shelf space and not needing to worry about damage as compared to physical copies, but also get the flexibility of being able to re-download purchased files and print a copy of the game or game supplement for personal use. *Id.*

From 2005 to the present, Opposer has sold over 7000 AUTODUEL-branded digital game products (over \$23,500 in sales), including over 3400 in the years 2014 and 2015 alone (over \$11,000 in sales). These figures include sales from the US-based Warehouse23.com to customers both in the United States and in other countries. Approximately 75% of the sales are to customers in the United States. *Id.* at ¶14.

Opposer has licensed use of the AUTODUEL Mark for computer games. The most well-known license was to Origin Systems, which originally released an AUTODUEL computer game in 1985, with subsequent releases on additional platforms from 1985-1988. The AUTODUEL computer game was set in the same post-apocalyptic setting and had the same vehicular combat features as the physical

² Exhibits 17-28 of the Reed Declaration contain captures of Warehouse23.com product listings for currently-available AUTODUEL products.

AUTODUEL gaming products.³ Opposer received royalties from this license through at least September 1992. *Id.* at ¶16.

Opposer subsequently licensed the AUTODUEL Mark for computer games to a company called VictorMaxx in 1995-1996, and a prototype game was created, but VictorMaxx filed for bankruptcy before it was able to release a AUTODUEL computer game. *Id.* at ¶17. Opposer still receives potential licensing inquiries and continues to have interest in licensing the AUTODUEL mark for the development of a computer game based on the AUTODUEL/Car Wars world, but has not been presented with a suitable proposal to do so. *Id.* at ¶18.

Opposer's Autoduel™ Quarterly game supplements have had the widest availability over the years in various forms, including print (1983-1993), HTML format at sjgames.com (1995-2006), and digital download (2005-present). Reed Decl. at ¶22. Opposer's GURPS® Autoduel™ products have been available from 1986 to the present, with two exceptions: (a) 1990-1995 before the release of the Second Edition in 1996/97; and (b) 2004-2007, before the release of GURPS® Autoduel™ Classic, the digital version of the Second Edition, in 2008. *Id.* at ¶23. Opposer has never intended, planned, or even considered permanently stopping use of the AUTODUEL Mark in connection with its game products, and as detailed above, is still selling AUTODUEL-branded products today. *Id.* at ¶24.

Applicant cannot genuinely dispute any of these facts, or the additional supporting facts that will be discussed in greater detail below. It will merely dispute the legal conclusions that can be drawn from these facts. Opposer believes these facts establish Opposer's trademark rights in the AUTODUEL Mark in connection with gaming products, with priority dating back to 1982. In the best case scenario for Applicant, these facts establish Opposer's rights in the AUTODUEL Mark in connection with digital gaming products with priority dating back to 2005, ten years before it filed its application. Either way,

³ Opposer does not have detailed sales figures available for the AUTODUEL computer game because the distribution was primarily handled by licensee Origin Systems. Reed Decl. at ¶16. Opposer's sales through its own mail-order service can be found in Reed Decl. Exhibit 13 at SJG001988.

Opposer has established that there is no genuine factual dispute underlying its assertion of trademark rights and priority in the AUTODUEL mark.

V. GROUNDS FOR SUMMARY JUDGMENT

A. Opposer Has Standing To Bring This Proceeding.

“[T]he Federal Circuit has set forth a liberal threshold for determining standing, namely, whether a plaintiff’s belief in damage has a reasonable basis in fact and reflects a real interest in the case.” *Nextel Commc’ns Inc. v. Motorola Inc.*, 91 U.S.P.Q.2d 1393, 1400 (TTAB 2009), citing *Ritchie v. Simpson*, 170 F.3d 1092, 50 U.S.P.Q.2d 1023 (Fed. Cir. 1999). An opposer can establish standing by demonstrating common law rights in a mark such that it has a reasonable concern of a likelihood of confusion. *Giersch v. Scripps Networks Inc.*, 90 U.S.P.Q.2d 1020, 1022 (TTAB 2009). Opposer’s evidence here of ownership and use of the AUTODUEL Mark demonstrates that it is not “a mere intermeddler” and establishes standing. *7-Eleven v. Wechsler*, 83 U.S.P.Q.2d 1715, 1719 (TTAB 2007).

Further, Opposer’s Application Serial No. 86806803 to register AUTODUEL for “Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games” has been suspended based on Applicant’s AUTODUEL application. Ress Decl. at ¶21. This provides an independent basis for Opposer’s standing. *Nextel Commc’ns*, 91 U.S.P.Q.2d at 1400 (standing established by opposer’s application that was suspended pending a potential refusal under Section 2(d) based on applicant’s mark); *see also Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, 116 U.S.P.Q.2d 1102, 1110 (T.T.A.B. 2015) (rejection of applications is sufficient to establish standing); *Continental Grain Co. v. Strongheart Products Inc.*, 9 U.S.P.Q.2d 1238, 1239 (T.T.A.B. 1988) (“no question” that party whose applications have been rejected has standing).

B. Applicant Had No Bona Fide Intent to Use the AUTODUEL Mark At Filing.

Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), allows trademark applications to be filed based on a bona fide intention to use the mark in commerce.⁴ Such a filing must be “under circumstances showing good faith.” 15 U.S.C. § 1051(b)(1). In other words, Applicant must be able to present objective evidence of its bona fide intent; merely saying that Applicant has such an intention is insufficient. *See Lane Ltd. v. Jackson International Trading Co.*, 33 U.S.P.Q.2d 1351, 1355 (TTAB 1994). When there is no evidence of an applicant's bona fide intent to use the applied-for mark in commerce at the time of filing, entry of summary judgment is appropriate. *See Honda Motor Co. v. Winkelmann*, 90 U.S.P.Q.2d 1660, 1660 (TTAB 2009).

On August 5, 2016, Opposer served on Applicant its First Set of Requests for Production to Applicant. Ress Decl. at ¶12. Opposer's document requests covered, among other topics, Applicant's selection, adoption, planned use and advertising, channels of trade, target customers, business research, and steps taken toward offering goods under the AUTODUEL mark. In response to Opposer's thirty-nine document requests, Applicant produced a total of 16 documents (52 pages) pertaining to these topics. *Id.* at ¶22, Ex. 41. The earliest of these documents is dated October 22, 2015, almost three months after the filing of its application, and pertains to a media inquiry that resulted from the discovery that Applicant its AUTODUEL application. Ress Decl. at ¶23; see also INX000069-70 attached to the Ress Decl. as Ex. 49. None of the documents can establish that Applicant has a *bona fide* intent at filing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ On October 28, 2016, Opposer filed its Motion for Leave to Amend its Notice of Opposition to add a claim based on Applicant's lack of bona fide intent. Although the motion is opposed and still pending, Opposer believes there is strong basis for the Board to grant leave to amend, and further that the undisputed facts render the claim ripe for summary judgment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Applicant has not used the AUTODUEL mark in commerce, and Applicant's testimony and discovery responses indicate that its development plans and business strategy for marketing products under the mark did not exist at filing and are still in their infancy, even 15 months after filing its application. Absent a sufficient explanation, "the absence of any documentary evidence on the part of an applicant regarding such intent is sufficient to prove that the applicant lacks a bona fide intention to use its mark in commerce." *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507 (TTAB 1993). The true explanation here is that [REDACTED]

[REDACTED] Fargo AEO Tr. at 91:17:92:9. Considering the entire circumstances discussed above, Applicant's filing of Serial No. 86702458 was made: (a) without a *bona fide* intention to use the mark in commerce; and (b) merely to reserve the mark and exclude others from registering AUTODUEL. Thus, Opposer is entitled to summary judgment on its lack of *bona fide* intent claim.

C. Opposer Has Priority in the AUTODUEL Mark.

1. *Opposer's AUTODUEL Mark Is Distinctive.*

Almost 35 years ago, Opposer coined the AUTODUEL Mark for its miniature figures, and continues to use the mark today. A review of any dictionary will show that "Autoduel" is not a word in the English language. Moreover, USPTO action on Opposer's prior applications for the AUTODUEL Mark indicate that the mark is inherently distinctive. Opposer previously registered the mark AUTODUEL! on the Principal Register for "Miniature Figures for Use with a Parlour Game Sold Separately". Reed Decl. at ¶3 and Ex. 1. Applicant has further filed two applications to register the AUTODUEL Mark. The first, Serial No. 85940537, lapsed due to Opposer's inadvertent failure to respond to an office action, but the USPTO never raised lack of distinctiveness as an issue. *See* Ress Decl.

at Ex. 50. The second, Serial No. 86806802, covering the same mark and goods, is suspended pending Applicant's opposed application with no other issues raised in prosecution. *See id.* at Ex. 47. Finally, the opposed application, Serial No. 86702458, was approved for publication on the Principal Register for game products, in this case "Providing online downloadable computer and video game programs; Interactive video game programs." The evidence is clear that AUTODUEL is inherently distinctive. Further, the evidence discussed in detail below in Section V(D)(4) demonstrates extensive actual confusion, and thus the AUTODUEL Mark does in fact distinguish Opposer and its goods in the market.

2. Opposer Has Continuously Used the AUTODUEL Mark in Commerce Nationwide For Almost 35 Years.

As discussed above in Section IV, Opposer began selling gaming products under the AUTODUEL Mark in 1982, and has done so in every year except 1994-95, when Opposer's GURPS® Autoduel™ product was out of stock between editions. *See* Reed Decl. at ¶¶7-21. Opposer has also continuously sold digital gaming products under the AUTODUEL Mark since 2005. *See id.* at ¶¶13-14, 19-20. Today, consumers purchase AUTODUEL role-playing games, maps, and other game supplements from Opposer's Warehouse23.com online store. *Id.* at ¶20. Opposer has long-standing and extensive rights in the AUTODUEL Mark in connection with gaming products.

3. Opposer Has Not Abandoned the AUTODUEL Mark.

Applicant has pleaded as an affirmative defense that "Applicant alleges that Opposer has abandoned any rights it may have had to the mark 'AUTODUEL.'" Answer at 4th Affirmative Defense. Applicant's assertion of abandonment is based on the twisted logic that because Opposer's digital gaming products sold today are not materially different from the physical gaming products it first published years ago, Opposer's continued use of the AUTODUEL mark somehow confers no trademark rights. There is no basis in law for Applicant's argument. Opposer has not discontinued use of the AUTODUEL Mark, has never had an intent not to resume use of the mark, and continues to sell AUTODUEL products today. *See* Reed Decl. at ¶¶7-24. It undisputed that Opposer has not legally abandoned its AUTODUEL Mark.

First, Opposer's transition from physical gaming products to digital gaming products does not result in the abandonment of Opposer's rights and priority in the AUTODUEL Mark. The Restatement Third of Unfair Competition Law clearly dictates that a change from one good (physical gaming products) to another related good (digital gaming products) does not amount to an abandonment of its trademark rights:

"A change in the kind of goods or services marketed under the trademark is not an abandonment of the trademark owner's priority if the new goods or services are sufficiently related to the original goods or services such that prospective purchasers are likely to perceive that the new product is originating from the same source as the original product. . . . [A] cessation of use with intent to resume use on a related product is not an abandonment."

Restatement Third, Unfair Competition § 30, cmt. b (1995).

Next, to the extent the facts can be construed as including a period of non-use of the AUTODUEL Mark, Opposer has resumed use and always had an intent to do so, as evidenced by its continued sale of AUTODUEL digital gaming products. Even where a three-year statutory period of nonuse of a mark is established, the Board may consider evidence and testimony regarding a defendant's practices that occurred before or after the three-year statutory period to infer the defendant's intent to resume use during the nonuse period. *Crash Dummy Movie LLC v. Mattel Inc.*, 601 F.3d 1387, 94 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 2010). Actual resumption of use of a mark is evidence of an intent to resume use during the non-use period. *See id.*

As exhaustively detailed above, Opposer continues to sell its digital gaming products under the AUTODUEL Mark. Moreover, the AUTODUEL products that Opposer has digitized for sale are carefully curated based on compatibility with other products and consumer demand. *See* Reed Decl. at ¶15. The fact that Opposer's digital releases under the AUTODUEL Mark contain material that was created previously does not support a finding of abandonment. *See Kingsmen v. K-Tel International, Ltd.*, 557 F. Supp. 178, 220 U.S.P.Q. 1045, 1049 (S.D.N.Y. 1983) (holding that performing group that ceased recording and disbanded in 1967, but continued use of the name to promote the sale of previous recordings, did not abandon rights in the group name); *see generally Grocery Outlet Inc. v. Albertsons, Inc.*, 2008 U.S. Dist. LEXIS 101999, *20-22 (N.D. Cal. Dec. 17, 2008) (granting summary judgment of

no abandonment of grocery chain service mark where inventory of LUCKY private label goods sold off for several years after change of grocery chain service mark from LUCKY to ALBERTSON'S).

Finally, Opposer may have inadvertently allowed itself to be in a position today of owning no federal trademark registration for its AUTODUEL Mark, but this fact does not support Applicant's abandonment defense. *See Crash Dummy Movie*, 94 U.S.P.Q.2d at 1317 (Section 8 cancellation of a registration does not establish that the prior registrant ceased using or abandoned its rights in the mark for those goods). Opposer does not contest that during the period from 2013 until September 2016, Opposer managed its U.S. trademark portfolio in house, resulting in the inadvertent abandonment and expiration of several of its USPTO filings. Reed Decl. at ¶36. Opposer inadvertently allowed its use-based Application Serial No. 85940537 to register AUTODUEL for digital gaming products to become abandoned on November 28, 2014, after successfully petitioning to revive the application once. *Id.* at 37-38. After learning of Applicant's application to register AUTODUEL, Opposer filed a new application, Serial No. 86806802, to register the mark AUTODUEL for the same products. *Id.* at ¶39. The application could have been filed based on use in commerce with the same date of first use and first use in commerce as its prior application, January 6, 2005, but mistakenly was not. *Id.*; *see also* Section IV, above.

Ultimately, Opposer's common law rights in the AUTODUEL Mark are well-established, and Applicant's arguments to the contrary are destined to fail.

D. Applicant's Proposed Use of AUTODUEL Is Likely To Result In Consumer Confusion.

In determining whether there is a likelihood of confusion between two marks, the Board considers the factors identified in *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Not all of the *DuPont* factors may be relevant or of equal weight in a given case, and "any one of the factors may control a particular case." *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406-07, 41 U.S.P.Q.2d 1531, 1533 (Fed. Cir. 1997). As demonstrated by the analysis below, every relevant factor favors Opposer.

1. Applicant's Proposed Mark AUTODUEL is Identical to Opposer's Mark.

Applicant's proposed mark AUTODUEL is identical to the AUTODUEL Mark used by Opposer for almost 35 years. Because the marks here are identical, the first factor not only weighs heavily in favor of a finding of likelihood of confusion, but also reduces the degree of similarity between the goods that is required to support a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 U.S.P.Q.2d 1687, 1688 (Fed. Cir. 1993); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650, 1661 (TTAB 2002).

Even considering that Opposer uses the separate registered mark GURPS and the common descriptive terms "Quarterly" and "America" in connection with certain AUTODUEL products, it is clear that the AUTODUEL Mark is the dominant, distinguishing portion of these uses. Because of the strong similarity between Applicant's proposed mark and Opposer's AUTODUEL Mark, the first factor weighs heavily in favor of Opposer.

2. Applicant's Proposed Goods are Very Closely Related to Opposer's Current Goods, and Identical to Opposer's Past Goods Offered under Opposer's Mark.

To support a finding of likelihood of confusion, it is sufficient that the respective goods are related or marketed in a manner that could give rise to the mistaken belief that they originate from a common source. *See Hilson Research, Inc. v. Soc'y for Human Res. Mgmt.*, 27 U.S.P.Q.2d 1423, 1432 (TTAB 1993); *In re Int'l Tel. & Tel. Corp.*, 197 U.S.P.Q. 910, 911 (TTAB 1978). Here, the evidence is overwhelming that the products are related and would be marketed in a manner that creates confusion. First, both Opposer's AUTODUEL products and Applicant's proposed AUTODUEL game are vehicular combat games in a post-apocalyptic setting. *See* Reed Decl. at ¶4-7, 16; Ress Decl. at Ex. 40, Response to Interrogatory No. 6; *see also* Fargo AEO Tr. at 96:16-97:11. Moreover, Opposer has previously licensed the AUTODUEL Mark for video games and computer games. Reed Decl. at ¶16-17. Further, whether or not Applicant's AUTODUEL game is a role-playing game, both parties are known for releasing this role-playing games. *See id.* at ¶6; Fargo Tr. at 36:20-37:3.

Moreover, it is common in the industry for intellectual property, including trademarks, to be licensed from makers of video games to makers of tabletop games, and vice versa. For instance, Opposer

previously released GURPS® Myth game and GURPS® Alpha Centauri based on licenses from the makers of the Myth and Sid Meier's Alpha Centauri computer games. Reed Decl. at ¶25. [REDACTED]

[REDACTED] Fargo AEO Tr. at 83:21-84:11. It is not surprising, then, that the Board has previously found that “board games” and “online and electronic games” are highly related goods, noting among other things evidence of websites featuring advertisements for electronic versions of popular board games. *In re J.G. Julian Toys, LLC*, Appeal No. 78916820 (TTAB June 25, 2008) (non-precedential).⁵

Further, both parties offer computer and video game products. Right now, consumers can acquire and play several such products from Opposer, including mobile games Dino Hunt® Dice and Zombie Dice®, mobile apps for use with its board game products, Ogre® War Room and Munchkin® Level Counter, and online games Frag®, Warehouse 23®, and UltraCorps®. Reed Decl. at ¶26. Opposer is also working with developer Auroch Digital to produce a computer game, Ogre®, based on its classic tank warfare board game with plans for a release in 2017. This game will be the second computer game based on Ogre; the first, like Opposer's AUTODUEL computer game, was released by Origin Systems in the 1980s. *Id.* at ¶27.

Video games are indisputably within the zone of natural expansion for the AUTODUEL brand. This fact strongly supports a likelihood of confusion. *See Time Warner Net'mt Co., L.P. v. Jones*, 65 U.S.P.Q.2d 1650, 1662 (T.T.A.B. 2002) (“[R]oad maps are within the natural area of expansion of products for which opposer might license use of its Looney Tunes marks, including the Road Runner.”). Where there is evidence that the opposer has actually considered such expansion, this further supports denial of a trademark application. *See R.J. Reynolds Tobacco Co. v. R. Seelig & Hille*, 2001 U.S.P.Q. 856, 859 (T.T.A.B. 1978). Applicant cannot credibly dispute that the goods at issue here are very closely related.

⁵ <http://ttabvue.uspto.gov/ttabvue/ttabvue-78916820-EXA-11.pdf>

3. *The Parties' Trade Channels are Identical and/or Overlapping.*

When the subject application does not place specific limitations on the listed goods, it is presumed that the listed goods travel in all “normal and usual channels of trade and methods of distribution.” *CBS, Inc. v. Morrow*, 708 F.2d 1579, 1581, 218 U.S.P.Q. 198 (Fed. Cir. 1983). Here, because the Application does not limit the trade channels for the listed goods, and because the goods are highly related, the trade channels are considered identical and overlapping. *Id.*

The parties' trade channels are also identical and overlapping in fact. Opposer's mobile games and applications, Dino Hunt® Dice, Zombie Dice®, Ogre® War Room, and Munchkin® Level Counter, are offered or sold through the Apple App Store, the Google Play store, the Microsoft/Windows Phone store. Reed Decl. at ¶26, 31. Likewise, Applicant plans to offer its AUTODUEL game through the Apple App Store and the Google Play Store. Ress Decl. at Ex. 40, Response to Interrogatory No. 12; *see also* Fargo AEO Tr. at 66:1-67:23. Opposer's in-development Ogre® computer game is planned to be distributed through the Steam digital distribution platform. Reed Decl. at ¶27. [REDACTED]

[REDACTED] Fargo AEO Tr. at 66:25-67-17. Opposer's physical game products⁶ are sold at local hobby/game stores, national retail chains (including Target, Wal-Mart, Gamestop, and Walgreens), and a wide range of online retailers (including Amazon.com, Target.com, Walmart.com, online hobby/game stores, and its own Warehouse23.com online retail store). Reed Decl. at ¶29. [REDACTED]

[REDACTED] Fargo AEO Tr. at 67:18-67:23. Simply put, Applicant plans to, or is considering, selling its AUTODUEL game in the same trade channels where Opposer distributes and sells its products.

Finally, consumers already encounter Opposer's products and Applicant's products in the same venues. [REDACTED]

[REDACTED] *See* Reed Decl. at ¶32; Fargo AEO Tr. at 81:1-81:7. Opposer's representatives

⁶ For sake of clarity, Opposer's AUTODUEL products are not currently sold in physical formats.

also appear at industry conventions that are open to the public and attended by companies in both the board game and computer game industry. Reed Decl. at ¶27. Like the similarity of the goods factor, that this factor strongly favors Opposer.

4. Applicant's Mere Filing Has Caused Actual Confusion.

This case presents the rare situation where Applicant's trademark filing resulted in widespread consumer and media confusion prior to any actual use of the mark by Applicant. But given the similarity of the marks, goods, and trade channels, perhaps this should not be a surprise. Opposer learned of Applicant's application to register the AUTODUEL mark after several articles were published on gaming news sites reporting on the discovery of the application. Reed Decl. at ¶33. The confusion started when the account for game news site RPG Codex tweeted on October 22, 2015: "Hell yes" and posted a screenshot of the TSDR page for Applicant's application. *See* Ress Decl. at Ex. 30 (SJG000469). The same day, Applicant's CEO, Brian Fargo, responded: "Once again the Codex is the first on the scene..." *Id.* at Ex. 31 (SJG000472). The responses to Fargo's tweet included the following: (1) "@BrianFargo any relation to @SJGames Autoduel?"; (2) "@ryannims @BrianFargo @SJGames Would think so. Another company tried to release an unrelated game and they had to change the name."; and (3) "@mattau with the new edition of Car Wars in progress, now's a great time for a digital version! @BrianFargo @SJGames"; as well as numerous other comments reminiscing about the 1985 AUTODUEL game by Origin Systems under license from Opposer. *Id.* (SJG000472-474).

The exchange between RPG Codex and Applicant's CEO triggered a flurry of articles and consumer comments relating Applicant's proposed use of AUTODUEL on a number of gaming websites. Several of these articles displayed images from Opposer's games (*see, e.g.*, Ress Decl at Exs. 32, 33, 36, 37, and 38), indicating a belief of sponsorship or association between Applicant's application and Opposer and its AUTODUEL mark. *See* Reed Decl. at ¶33, and Exs. 6 (AUTODUEL video game box) and 29 (Car Wars Deluxe Edition box). Further, many of these articles explicitly stated a belief in sponsorship or association by Opposer or otherwise a connection between Applicant's application and Opposer's AUTODUEL mark, as detailed in the chart below:

<u>Statement</u>	<u>Citation / Source / Author / Date</u>
“Autoduel was a racing/RPG based on the Steve Jackson Games pencil-and-paper RPG Car Wars, a vaguely Mad Max-ish game about heavily-armed vehicles doing battle in a post-apocalyptic America. The computer version was developed by the long-defunct Origin Systems and released all the way back in 1988. And now, if a trademark filing dug up by the RPG Codex is to be believed, it may be on the way back.”	SJG000470 (Ress Decl. at Ex. 32) PC Gamer Andy Chalk October 22, 2015
“InXile appear to be working on an Autoduel reboot” “The original game . . . was an RPG based around Steve Jackson Games’ tabletop title Car Wars.” “It looks like the idea for <i>MotorGun</i> has shifted back to inXile, and the rights to use the <i>Autoduel</i> name have been secured.”	SJG000506-07 (<i>Id.</i> at Ex. 33) PC Invasion Paul Younger October 22, 2015
“A trademark filing spotted by the RPG Codex suggests one possible reason for expansion – another license for another RPG. This time it’s Autoduel, the vehicular combat game derived from Steve Jackson Games’ Car Wars.”	SJG000475 (<i>Id.</i> at Ex. 34) Rock Paper Shotgun Adam Smith October 23, 2015
“InXile Entertainment has filed a trademark for what may be one of their next projects, <i>Autoduel</i> . If it is what they are working on, <i>Autoduel</i> would continue the recent trend from InXile of resurrecting brands from the 1980s and bringing them into the modern day, as the original <i>Autoduel</i> was published in 1985 by Origin as a vehicular combat RPG. Based on the Steve Jackson Games series <i>Car Wars</i> , <i>Autoduel</i> was generally well-received and particularly noted for a punishing difficulty.”	SJG000523 (<i>Id.</i> at Ex. 35) Tech Raptor Don Parsons October 23, 2015

Even more confusion can be found in the consumer comments on these and other articles. The chart below reproduces some of the comments from consumers:

<u>Comment</u>	<u>Citation</u>
“Very excited to see one of my favorite boardgames getting a PC port by a studio that seems competent. . .”	SJG000508 (Ress Decl. at Ex. 33)
“The revival of games from the 80s and 90s keeps rolling along. I’m sure that Steve Jackson Games would be thrilled if Fargo and Co can bring Car Wars into the mobile age. . .”	SJG000478 (<i>Id.</i> at Ex. 34)
“If they make Autoduel, it’s a ‘shut up and take my money’ situation for me. I played Car Wars PnP to death, and played Autoduel on the 8-bits nearly to death.”	SJG000479 (<i>Id.</i> at Ex. 34)
“I never played Autoduel, so I have no idea if it’s something worth reviving, but when I hear the phrase “a vehicular combat game, with RPG elements” Steve Jackson’s Car Wars immediately pops into my mind...” “Autoduel was in fact based on Car Wars”	SJG000383 (<i>Id.</i> at Ex. 36)

Consumers posting on Applicant’s own online forums also expressed the belief that Applicant must have Opposer’s permission to use the AUTODUEL mark, *e.g.*, “The original Autoduel was a

tabletop RPG and (incredibly complex) turn-based strategy game, so they might be planning to use the license to make a turn-based RPG set in the Autoduel universe.” Ress Decl. at Ex. 39 (SJG000482).

The extent of actual confusion is amazing, given that Opposer has yet to use the mark in commerce, but it can all be traced back to the RPG Codex tweet and the response by Applicant’s CEO. Notably, Mr. Fargo has made no attempt to correct the misconception that inXile will be rebooting or creating a successor to the 1985 AUTODUEL game. *See* Fargo Tr. at 122:22-124:10. This is likely because Mr. Fargo chose the AUTODUEL name at least in part because of its continued association with the 1985 AUTODUEL game licensed by Opposer. *See* Fargo Tr. at 92:10-92:23.

5. The Parties’ Goods Are Purchased On Impulse.

[REDACTED] (Fargo AEO Tr. at 66:1-66:24), which may be purchased on impulse. Opposer offers a number of mobile phone games and apps that range in price from free to \$4.99. Reed Decl. at ¶26. [REDACTED]

[REDACTED] Further, Opposer’s physical AUTODUEL gaming products ranged in price from \$2.50 to \$19.95, and its digital AUTODUEL gaming products range in price from \$2.99 to \$7.99. *Id.* at ¶¶12, 21, and Ex. 17-28. “When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.” *Recot, Inc. v. Becton*, 214 F.3d. 1322, 1329, 54 U.S.P.Q.2d 1894, 1899 (Fed. Cir. 2000). Accordingly, this factor favors Opposer.

6. Opposer’s AUTODUEL Mark is Longstanding and Well-Known.

The details of Opposer’s longstanding use of the distinctive AUTODUEL Mark is detailed above in Section IV and in the Reed Declaration at Paragraphs 3-24. Opposer’s nearly 35 years of use of the AUTODUEL Mark, especially when viewed in the context of the numerous instances of actual confusion, demonstrate that the AUTODUEL Mark is well-known and enjoys substantial goodwill. For these reasons, this factor favors a finding of likelihood of confusion.

7. Opposer Uses Its AUTODUEL Mark on a Variety of Goods.

Use of a mark by an opposer on a variety of products makes it more likely that relevant consumers will be confused by an applicant's similar mark. *See Uncle Ben's Inc. v. Stubenberg Int'l Inc.*, 47 U.S.P.Q.2d 1310, 1313 (T.T.A.B. 1998). Opposer has used the AUTODUEL Mark for a wide variety of gaming products, including board games, role-playing games, video games, and game supplements and accessories. Reed Decl. at ¶7. Opposer has further used the related AADA mark (standing for American Autoduel Association) in connection with patches, shot glasses, and a fan club. *See id.* at Ex. 13. Accordingly, this factor favors Opposer.

8. The Extent of Potential Confusion Is Substantial.

The extent of potential confusion is determined by looking at the relatedness of goods and trade channels. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 949 (Fed. Cir. 1998). As discussed above, Applicant's alleged goods and Opposer's goods are highly related gaming products to be sold in identical trade channels. The extent of potential confusion is further demonstrated here by the extensive actual confusion, despite Applicant not having even launched a product. Therefore this factor strongly favors Opposer.

9. Opposer Has Enforced Its Rights in the AUTODUEL Mark.

In 2013, Opposer sent a demand letter to Big Boat Interactive, Inc./Pixelbionic regarding their proposed use and application to register AUTODUEL for "computer game software for personal computers and home video game consoles" (Serial No. 85846846). Reed Decl. at ¶34. The application filed by Big Boat Interactive pertained to a computer game announced by the company Pixelbionic, and in response to Opposer's letter, the name of the proposed game was changed from "Autoduel" to "Motorgun." *Id.*; *see also* Kaufman Tr. at 25:17-27:4. Pixelbionic's co-founder, Maxx Kaufman, is a current an employee of inXile Entertainment, Inc., [REDACTED] [REDACTED] (Kaufman AEO Tr. at 81:16-83:21). Ultimately, Opposer filed Opposition No. 91212273 against Big Boat Interactive's application, and the TTAB sustained the opposition after a default. *Id.* at ¶35.

Further, Opposer's enforcement has been successful. Applicant admits that it is not aware of any other uses or registrations by third parties of "Autoduel" in connection with games, toys, computer games, video games, role-playing games, or computer software. Ress Decl. at Ex. 40, Response to Interrogatory No. 26.

10. Applicant Chose the AUTODUEL Mark Because of its Goodwill and Was Aware of Opposer's Claim of Rights Prior to Filing Its Application.

Applicant's CEO, Mr. Fargo, clearly understands that Applicant's choice of AUTODUEL carries with it some inherent value as a result of Opposer's use of the AUTODUEL mark: "Well, I thought it was a great name and I knew there was a computer game before that. So it certainly wouldn't hurt. . . . Whenever there's any requisition value for names, I find it helps to establish yourself in a crowded marketplace." Fargo Tr. at 92:10-92:23. Mr. Fargo went on to admit that his proposed AUTODUEL game would be "based on" Opposer's prior AUTODUEL game. Fargo Tr. at 183:19-184:8. The degree to which Applicant plans to base its proposed AUTODUEL game on Opposer's intellectual property is not absolutely clear, but what is clear is that Mr. Fargo and inXile believed that in using the AUTODUEL mark, they would receive the benefit of prior goodwill in the mark. That prior goodwill belongs to Opposer.

Mr. Fargo was also aware of Opposer's prior dispute with Big Boat Interactive/Pixelbionic (Fargo Tr. at 93:20-94:24), and Opposer's claimed rights in the AUTODUEL mark at least as far back as 2013 (Fargo Tr. 177:1-177:10). [REDACTED]

[REDACTED]

Kaufman AEO Tr. at 81:16-83:21.

Applicant had a more-than-sufficient basis to conduct further investigation into Opposer and its AUTODUEL Mark. [REDACTED]

[REDACTED] Fargo AEO Tr. at 91:17:92:9. Only in the aftermath of filing did Applicant begin considering what type of game it might develop to use with the AUTODUEL mark.

See Section V(B). These facts indicate Applicant's bad faith, or at the very least, negate any claim of good faith.

11. Confusion is Likely, and Has Already Occurred.

Based on the foregoing, there should be no doubt that confusion between the two marks at issue is likely. As demonstrated above, every relevant factor favors Opposer's position, many overwhelmingly so. Furthermore, even if some small doubt existed as to confusion, "it must be resolved against the newcomer in favor of the prior user or registrant." *In re Pneumatiques, Caoutchouc Mfr.*, 487 F.2d 918, 919-20 (C.C.P.A. 1972). Accordingly summary judgment should be granted in favor of Opposer with respect to its likelihood of confusion claim.

E. Applicant's Affirmative Defenses Are Unfounded.

Opposer's Answer identifies four affirmative defenses: (1) failure to state a claim; (2) unclean hands; (3) no confusion; and (4) abandonment. The first and third defenses are not valid defenses; instead they are the basis for a motion to dismiss (whose time has passed) and the ultimate issue of the Section 2(d) claim (whether or not confusion is likely). As such, only the alleged defenses of unclean hands and abandonment could prevent the entry of summary judgment here. As discussed below, there is no basis in law or fact for either of Applicant's alleged affirmative defenses.

1. Applicant's Unclean Hands Defense is Based Solely on Opposer's Enforcement of its Trademark Rights.

Applicant has no evidence to support its alleged unclean hands defense. In response to Opposer's Interrogatory No. 29, Applicant merely referred to its assertion in response to the prior interrogatory that Opposer has no trademark rights in the AUTODUEL Mark, and added: "Applicant further responds that Opposer's claim that it owns the autoduel mark, including its claim that it has intended and intends to resume use (sic) the mark in the future, is in bad faith, and made simply because it wishes to prevent Applicant from using 'autoduel.'" See Ress Decl. at Ex. 40. Applicant can point to no activity other than Opposer's enforcement of its trademark rights to "preclude the registration of what it believes to be a confusingly similar mark, a right which every trademark owner possesses under the common law and

Lanham Act.” *Cook’s Pest Control, Inc. v. Sanitas Pest Control Corp.*, 197 U.S.P.Q. 265, 268 (TTAB 1977); *see also Avia Group Int’l Inc. v. Faraut*, 25 U.S.P.Q.2d 1625, 1627 (TTAB 1992). Thus, there is no genuine dispute of material fact with respect to Applicant’s unclean hands defense, and Opposer is entitled to summary judgment dismissing the defense.

2. *Opposer Has Not Abandoned the AUTODUEL Mark.*

Opposer’s fourth affirmative defense of abandonment was addressed in above in Section V(C)(3). It is clear from the facts here that Opposer has not abandoned the AUTODUEL Mark, and Opposer is entitled to summary judgment on the defense of abandonment as well.

VI. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, there are no genuine disputes of material fact relating to the issues of standing, Applicant’s lack of *bona fide* intent, Opposer’s priority, likelihood of confusion, and/or Applicant’s asserted affirmative defenses. Thus, Opposer respectfully requests that the Board grant summary judgment in favor of Opposer on each of these issues, sustain the opposition, and reject Applicant’s Application Serial No. 86702458 to register AUTODUEL.

Respectfully submitted,

Dated: November 11, 2016

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STEVE JACKSON GAMES, INC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEVE JACKSON GAMES
INCORPORATED

Opposer,
v.

INXILE ENTERTAINMENT, INC.
Applicant.

Opposition No. 91225722
Serial No. 86/702,458

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OPPOSER'S MOTION FOR
SUMMARY JUDGMENT was served via email and first class mail this 11th day of November,
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EXHIBIT A

to Opposer's Motion for Summary Judgment

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEVE JACKSON GAMES
INCORPORATED

Opposer,

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INXILE ENTERTAINMENT, INC.

Applicant.

Opposition No. 91225722

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DECLARATION OF PHIL REED

I, Phil Reed, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom, declare that:

1. I am the Chief Executive Officer of Opposer, Steve Jackson Games Incorporated (“Opposer”). I have been Chief Executive Officer since December 2014, and I have worked for Opposer continuously since April 2007. I also previously worked for Opposer from 1999-2004. I am directly involved in Opposer’s product development, sales, and marketing efforts.

2. Opposer is a publisher of games, books, and gaming-related magazines. Since 1980, Opposer has published over 100 different titles, including board games, role playing games, card games, dice games, and war games, as well as supplements for its games (materials that add new features, rules, settings, etc. for use with the base games) and a wide range of accessories, including miniatures, plush figures, and clothing. Opposer also offers mobile apps for use with its tabletop games, as well as stand-alone online games and mobile app games.

3. Steve Jackson Games first released an AUTODUEL product in the United States in 1982 when it began selling miniature figures bearing the mark AUTODUEL! for its Car Wars™ board game. Based on this use, Opposer's predecessor (Steven G. Jackson d.b.a. Steve Jackson Games) registered the mark AUTODUEL! with the United States Patent and Trademark Office in connection with "Miniature Figures for Use with a Parlour Game Sold Separately", Registration No. 1,293,028, issued September 4, 1984. The registration was assigned to Opposer as of October 1, 1984. A true and correct copy of Reg. No. 1,293,028, produced at Bates Nos. SJG001897-1898, is attached hereto as Exhibit 1. Opposer's Reg. No. 1,293,028 was eventually cancelled by the USPTO as of June 11, 2005.

4. Car Wars™ is a vehicular combat board game where players build vehicles with weapons, armor, and more, and then engage in combat in a post-apocalyptic setting. Opposer's Car Wars™ board game is on its 5th Edition, with a 6th Edition announced and under playtesting, and Opposer has launched a large number of supplements and accessories for the Car Wars game, including a stand-alone Car Wars™ The Card Game and a recent Kickstarter campaign and product launch for Car Wars Arenas, a new release of arena maps from prior Car Wars supplements.

5. Like the AUTODUEL miniature figures, a number of Opposer's AUTODUEL-branded products are supplements for its Car Wars board game, and all of its AUTODUEL-branded products involve vehicular combat and inhabit the same post-apocalyptic setting fifty years in the future. For instance, Opposer's Autoduel™ Quarterly provided campaign seeds, scenarios, vehicles, mock advertisements, new weapons and accessories, and fiction relating to the Car Wars™ world. Once Opposer released the GURPS® Autoduel™ game, described below, Autoduel Quarterly also served as a supplement for GURPS Autoduel.

6. Opposer is also the creator of the Generic Universal RolePlaying System, or GURPS. GURPS® is a tabletop role-playing game system designed to allow for play in any game setting. GURPS® Autoduel™ is a role-playing “worldbook” that provides gamers with the rules, background, setting, and details necessary to conduct role-playing games using the underlying GURPS system and set in the post-apocalyptic setting of Car Wars. Several of the AUTODUEL-branded products sold by Opposer are supplements for both Car Wars™ and GURPS® Autoduel™.

7. Opposer has released a wide range of titles under the AUTODUEL Mark nationwide, as well as additional supplements which bear the AUTODUEL Mark. The chart below summarizes these products, along with physical and digital release dates. True and correct copies or photographs of each of the products in the chart are attached as indicated in the final column by Exhibit No. and Bates Range.

<u>Product</u>	<u>Description</u>	<u>Initial Physical Release</u>	<u>Initial Digital Release</u>	<u>Exhibit & Bates Nos.</u>
Autoduel!® miniatures	miniature figurines of vehicles; registration has since expired	1982	n/a	<u>Exhibit 2</u> SJG002015-2016
Autoduel™ Champions	role-playing game in Car Wars™ setting with superheroes from Champions game, the latter of which was licensed	1983	n/a	<u>Exhibit 3</u> SJG001092
Autoduel™ Quarterly	quarterly supplement for Car Wars, and later, GURPS® Autoduel™, featuring campaign seeds, scenarios, vehicles, mock advertisements, new weapons and accessories, and fiction relating to	1983-1993 (40 issues)	2005	<u>Exhibit 4</u> SJG002018

	Car Wars world			
Autoduel™ Play-By-Mail	play-by-mail version of Car Wars, operated under license by Prometheus Games	1984	n/a	<u>Exhibit 5</u> SJG000254 (ad for service)
Autoduel™ video game	vehicular combat video game, based on Car Wars, released by Origin Systems under license from Opposer	1985-1988 (multiple platforms)	n/a	<u>Exhibit 6</u> SJG000239 (cover pictured in article) SJG000240 (ad for game)
GURPS® Autoduel™ (1 st Edition)	role-playing game in the same universe as Car Wars, using Opposer's GURPS® role-playing game system	1986	n/a	<u>Exhibit 7</u> SJG001095
AADA™ Road Atlas	game supplement for Car Wars and GURPS Autoduel	1986-1991 (7 volumes)	2014	<u>Exhibit 8</u> SJG001912, 21, 30, 39, 48, 57, 66
GURPS® Autoduel™ : Car Warriors	game supplement for GURPS Autoduel	1987	n/a	<u>Exhibit 9</u> SJG001099
Zombietown USA	game supplement for GURPS Autoduel	1988	2006	<u>Exhibit 10</u> SJG001103
Autoduel™ America map	two full-color maps for use with Car Wars and GURPS Autoduel	1989	2013	<u>Exhibit 11</u> SJG001981
Autoduel™ Online	announced online video game under development by licensee VictorMaxx in 1995-1996, but ultimately cancelled	n/a	n/a	n/a
GURPS® Autoduel™	new edition of role-playing game in	1996/1997	2008	<u>Exhibit 12</u>

(2 nd Edition)	the same universe as Car Wars, using Opposer's GURPS role-playing game system			SJG000919
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8. The Kickstarter funding campaign for Car Wars Arenas, referenced above in Paragraph 5, launched on March 31, 2015, and the product was officially funded as of April 29, 2015. One of the rewards that was offered under the Kickstarter campaign was a set of 16 digital issues of Autoduel™ Quarterly (Volumes 1-4), awarded to 1520 customers who contributed to the Kickstarter campaign. The distribution of these Autoduel™ Quarterly issues is not otherwise included in the sales figures discussed below.

9. Opposer has records of sales of physical AUTODUEL gaming products throughout the United States for every year from 1983 until 2012, with the exception of the period from 1994-1995, when no records were available. The period from 1994-1995 represents time before the announcement of the newly updated GURPS® Autoduel™ in 1996 and subsequent release in 1997. It is a common practice of Opposer to temporarily list products as out-of-stock between different editions so that stock of an earlier edition can be cleared from its warehouse and from retailers' stock before a new edition is released.

10. A true and correct report from Opposer's accounting system detailing the sales of AUTODUEL-branded products, by unit, produced as CONFIDENTIAL at Bates Nos. SJG001985-2003, is attached as Exhibit 13. A small number of corrections can be found in the summary document, produced as CONFIDENTIAL at Bates Nos. SJG002375, attached as Exhibit 14.

11. The first six and half pages of Exhibit 13 (plus a few corrections from Exhibit 14) detail the sales of AUTODUEL-branded physical products (*i.e.*, physical games and game

supplements), by units per year, from 1983 to 2012, as well as some related products bearing the AADA mark, which stands for the American Autoduel Association. Each of the listed products bears the AUTODUEL mark on the cover except the following, which only bear the AADA mark: the three AADA Vehicle Guides, AADA Duel Circuit, AADA Pins, Car Wars AADA Patch, two sets of AADA Vehicle Guide Counters, and Car Wars AADA Shot Glass.

12. Opposer has sold well over 350,000 AUTODUEL-branded physical game products. The suggested retail price for these products ranged from \$2.50 for early issues of Autoduel Quarterly to \$19.95 for GURPS Autoduel. Opposer continued to sell physical AUTODUEL-branded game products until 2012, when it sold its remaining stock.

13. The remaining thirteen and a half pages of Exhibit 13 (starting on Page 7) detail the sales of AUTODUEL-branded digital game products, by units per year, from 2005-2016 (through July 18, 2016), as well as some related products bearing the AADA mark. Each of these products bears the AUTODUEL mark on the cover except the following, which only bear the AADA mark: the three AADA Vehicle Guides, The AADA Duel Circuit: L'Outrance, and two sets of AADA Vehicle Guide Counters.

14. From 2005 to the present, Opposer has sold over 7000 AUTODUEL-branded digital game products, including over 3400 in the years 2014 and 2015 alone. Because these products are digital, the sale prices are lower than their prior physical counterparts, but these sales still account for over \$23,500 in sales of AUTODUEL-branded digital products since 2005, with over \$11,000 coming in the years 2014 and 2015 alone. These figures include sales from the US-based Warehouse23.com to customers both in the United States and in other countries. Approximately 75% of the sales are to customers in the United States.

15. Opposer has not made all of its prior AUTODUEL-branded game products

available in digital format. It has selected and released products based upon customer requests, as well as compatibility with its Car Wars™ games and universe. Opposer has many customers that play its Car Wars™ games and use its GURPS® role playing system. GURPS® Autoduel™ Classic (2nd Edition in the print version) is compatible with the GURPS Third Edition, which is still played by many of Opposer's customers. The material in GURPS® Autoduel™ Classic can also be adapted to work with the current edition of Opposer's GURPS role playing system. True and correct copies of announcements on Opposer's website pertaining to digital release of AUTODUEL-branded game supplements, produced as Bates Nos. SJG000677, 678, and 679, are attached as Exhibit 15.

16. Opposer has previously licensed use of the AUTODUEL mark for computer games. The most well-known license was to a company called Origin Systems that originally released an AUTODUEL computer game in 1985, with subsequent releases on additional platforms from 1985-1988. The AUTODUEL computer game was set in the same post-apocalyptic setting and had the same vehicular combat features as the physical AUTODUEL gaming products. Opposer does not have detailed sales figures available for the AUTODUEL computer game because the distribution was primarily handled by licensee Origin Systems. Opposer's sales through its own mail-order service can be found in Exhibit 13 at SJG001988. Further, Opposer received royalties from this license through at least September 1992.

17. Opposer subsequently licensed the AUTODUEL mark for computer games to a company called VictorMaxx in 1995-1996, and a prototype game was created, but VictorMaxx filed for bankruptcy before it was able to release a AUTODUEL computer game.

18. Opposer still receives inquiries regarding potentially licensing the AUTODUEL mark for a new video game, and received such an inquiry as recently as April 2015. A true and

correct copy of correspondence pertaining to potentially licensing the AUTODUEL mark for video games, produced as ATTORNEYS' EYES ONLY at Bates Nos. SJG001238, is attached as Exhibit 16. Opposer continues to have interest in licensing the AUTODUEL mark for the development of a computer game based on the AUTODUEL/Car Wars world, but has not been presented with a suitable proposal to do so.

19. Opposer has continuously sold digital gaming products under the AUTODUEL Mark in the United States since 2005, and has expanded the collection of products bearing the AUTODUEL Mark over time with digital product releases of Autoduel™ Quarterly (in 2005), Zombietown USA supplement (in 2006), GURPS® Autoduel™ Classic (in 2008), Autoduel™ America maps (in 2013), and AADA Road Atlases (in 2014).

20. Today, consumers can visit Opposer's Warehouse23.com online retail store and purchase no less than 50 different products bearing the AUTODUEL mark. Consumers who purchase digital products from Warehouse23.com benefit not only by saving shelf space and not needing to worry about damage as compared to physical copies, but also the flexibility of being able to re-download purchased files and print a copy of the game or game supplement for personal use.

21. Attached hereto as Exhibits 17-28 are true and correct printouts of example product listings for digital gaming products currently sold under the AUTODUEL Mark through Warehouse23.com. Each product has been available since the release date referenced in Paragraph 19 above. All of the products identified in Exhibits 17-28 have been available since at least the year 2014, and are available for purchase by customers worldwide.

22. Opposer's Autoduel™ Quarterly game supplements have had the widest availability over the years in various forms, including print sales (1983-1993), free online

availability in HTML format at sjgames.com (1995-2006), and digital download (2005-present).

23. Opposer's GURPS® Autoduel™ products have been available from 1986 to the present, with two exceptions: first, a period between 1990-1995 before the release of the Second Edition in 1996/97; and second, a period between 2004-2007, before the release of GURPS® Autoduel™ Classic, the digital version of the Second Edition, in 2008.

24. Opposer has never intended, planned, or even considered permanently stopping use of the AUTODUEL mark in connection with its game products, and as detailed above, is still selling AUTODUEL-branded products today.

25. Opposer sells a number of different game products in addition to its AUTODUEL-branded products, including various licensed products. Opposer works with other intellectual property owners to reach mutually agreeable terms to use their trademarks and other intellectual property rights in connection with its products. For example, Opposer previously released GURPS® Myth game, which was based on the Myth computer game series that was released by the publisher Bungie. Opposer also previously released GURPS® Alpha Centauri, which was based on the computer game Sid Meier's Alpha Centauri released by the publisher Electronic Arts.

26. Opposer has released and currently has available for purchase or download a number of computer software and video game products, including mobile games Dino Hunt® Dice and Zombie Dice®, mobile apps for use with its board game products, including Ogre® War Room and Munchkin® Level Counter, and online games Frag®, Warehouse 23®, and UltraCorps® (acquired from Microsoft). The Dino Hunt® Dice game is available for free from the Apple App Store. The Ogre® War Room app is available for free, and the Munchkin® Level Counter app is available for \$4.99, both from the Apple App Store and the Google Play store.

The Zombie Dice® game is available for free from the Apple App Store and the Microsoft/Windows Phone store.

27. Opposer is working with developer Auroch Digital to produce a computer game, Ogre®, based on its classic tank warfare board game. The game was announced July 26, 2016, and is currently under development with plans for a release in late 2017. The game is planned to be distributed through the Steam digital distribution platform. This game will be the second computer game adaptation of Ogre. The original computer game was released in 1986 by Origin Systems.

28. Steve Jackson Games has representatives appear at a wide range of industry conventions, including those that are open to the public and attended by companies in both the board game and computer game industry, such as RTX, Pax Prime, Pax East, and Pax South.

29. Opposer's products are offered or sold through a wide variety of outlets. Its physical game products are sold at local hobby/game stores, national retail chains (including Target, Wal-Mart, and Walgreens), and a wide range of online retailers (including Amazon.com, Target.com, Walmart.com, online hobby/game stores, and its own Warehouse23.com online retail store).

30. Opposer's digital game products are sold through its Warehouse23.com online retail store, which sells Opposer's products as well as thousands of products, both physical and digital, from over seventy-five other game publishers.

31. Opposer's mobile games and applications, referenced above in Paragraph 26, are offered or sold through the Apple App Store, the Google Play store, the Microsoft/Windows Phone store. Opposer also has two online games, Frag and Ultracorps, available for play through a web browser.

32. Opposer has successfully funded three different game releases through the Kickstarter crowdfunding platform – Ogre Designer’s Edition, Car Wars Classic Arenas, and most recently, Dungeon Fantasy Powered by GURPS. The Ogre Designer’s Edition and Car Wars Classic Arenas games have been delivered to customers. The funding period for Dungeon Fantasy Powered by GURPS recently closed at the end of September 2016, and is estimated to be delivered to customers in May 2017.

33. Opposer learned of Applicant's application to register the AUTODUEL mark after several articles were published on gaming news sites reporting on the discovery of the application. Several of these articles used images from the 1985 AUTODUEL computer game, made assumptions that Applicant would be rebooting the 1985 AUTODUEL computer game, referenced Steve Jackson Games, and/or referenced Opposer's CAR WARS game. One image that appears in several articles was used on the game box for both Car Wars Deluxe Edition and the AUTODUEL computer game, both of which were originally released in 1985. A true and correct image of the Car Wars Deluxe Edition box, produced at Bates Nos. SJG001493 as part of a Steve Jackson Games catalog, is attached as Exhibit 29.

34. On June 19, 2013, Opposer sent a demand letter to Big Boat Interactive, Inc./Pixelbionic regarding their proposed use and application to register AUTODUEL for “computer game software for personal computers and home video game consoles”. The application filed by Big Boat Interactive pertained to a computer game announced by the company Pixelbionic. After sending the demand letter, Big Boat Intearctive/Pixelbionic changed the name of its proposed game from “Autoduel” to “Motorgun.” Pixelbionic was co-founded by an individual named Maxx Kaufman, who is currently an employee of inXile Entertainment, Inc.

35. On September 3, 2013, Opposer filed an opposition proceeding in the Trademark

Trial and Appeal Board of the United States Patent and Trademark Office (Opposition No. 91212273) against the application by Big Boat Interactive to register the mark AUTODUEL. The opposition was sustained after Big Boat Interactive defaulted in the proceeding.

36. During the period from at least as early as 2013 until September 2016, Opposer managed its U.S. trademark portfolio in house, resulting in the inadvertent abandonment and expiration of several of its filings with the United States Patent and Trademark Office.

37. On May 23, 2013, Opposer filed U.S. Application Serial No. 85940537 to register the mark AUTODUEL for “Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games.” The application was based on use in commerce, with a date of first use and first use in commerce of January 6, 2005.

38. Opposer inadvertently allowed the application to become abandoned on March 31, 2014, for failure to respond to an office action. On April 3, 2014, Opposer successfully petitioned to revive the application and submitted a response to the office action. On April 30, 2014, the USPTO issued another office action. Opposer inadvertently failed to respond to the office action, causing the application to become abandoned again on November 28, 2014.

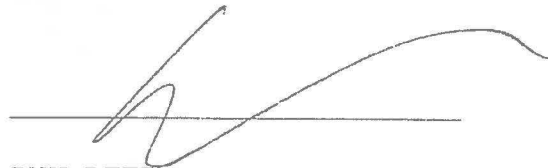
39. On November 2, 2015, Opposer filed a new application, U.S. Application Serial No. 86806802 to register the mark AUTODUEL for “Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games.” The application was based on an intent to use the mark in commerce, but could have been filed based on use in commerce with the same date of first use and first use in commerce as its prior application, January 6, 2005.

40. Opposer also inadvertently allowed: (a) its Registration No. 1,291,297 for the mark CAR WARS for "Printed Matter for Playing a Parlor Type Game" to expire on March 25, 2016, and (b) its Registration No. 1,296,439 for the mark ILLUMINATI for "Equipment Sold as a Unit for Playing a Parlor Game" and "Conducting Game Tournaments by Mail, and Face-to-Face Tournaments Involving a Parlor Game" to expire on January 11, 2016. Opposer had continued use of both of these marks in connection with the identified goods, and has since re-filed to register these marks, Application Serial Nos. 87058520 and 87058492, respectively.

41. As of September 12, 2016, to prevent further issues with its U.S. trademark portfolio, Opposer turned over the management of the portfolio to outside counsel.

42. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated and signed in Austin, Texas on the 11 day of November, 2016.



PHIL REED

EXHIBIT 1

Declaration of Phil Reed



Nº 1293028

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this fourth day of September, 1984.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 28

Prior U.S. Cl.: 22

United States Patent and Trademark Office

Reg. No. 1,293,028

Registered Sep. 4, 1984

TRADEMARK
Principal Register

AUTODUEL!

Steven G. Jackson (United States citizen), d.b.a. Steve
Jackson Games
P.O. Box 18957
Austin, Tex. 78760

For: MINIATURE FIGURES FOR USE WITH
A PARLOUR GAME SOLD SEPARATELY, in
CLASS 28 (U.S. Cl. 22).
First use Jul. 16, 1982; in commerce Jul. 16, 1982.

Ser. No. 421,191, filed Oct. 4, 1982.

SUSAN A. RICHARDS, Examining Attorney

NOTICE

This Registration will be canceled by the Commissioner of Patents and Trademarks at the end of six years following the date of registration, unless within one year next preceding the expiration of such six years, the registrant files in the Patent and Trademark Office an affidavit showing that said mark is in use in Commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. A fee of \$100.00 for each class must accompany the affidavit.

EXHIBIT 2

Declaration of Phil Reed

AUTODUEL!

3 Pickups

Design: Denis Loubet

Sculpture: Dan Joplin

#6202



STEVE JACKSON GAMES

MINIATURES FOR

AUTODUEL!

He triggered the rear guns once more. A direct hit! The blue car skidded as the driver lost control — then it flipped and caught fire.

That would teach HIM not to tailgate . . .

AUTCDUEL is the hit game of future freeway combat. These are the official miniatures — in perfect scale for road wars or arena battles. Customize them, paint them, and take them out for a drive!

Warning: These figures contain lead. Not recommended for very small children.

These figures custom cast by T-Rex Miniatures for SJ Games. AUTODUEL is a trademark of SJ Games for its game of future car battles.

For a complete catalog of our miniatures, games, game products, and magazines, send a stamped self-addressed envelope to:

STEVE JACKSON GAMES
BOX 18957
AUSTIN, TX 78760

EXHIBIT 3

Declaration of Phil Reed

AUTODUEL CHAMPIONS

CAR WARS Superheroes and CHAMPIONS Autoduelling in one SUPER-SUPPLEMENT!



STEVE JACKSON CANALS

EXHIBIT 4

Declaration of Phil Reed

Spring 2035

Vol. 3, No. 1

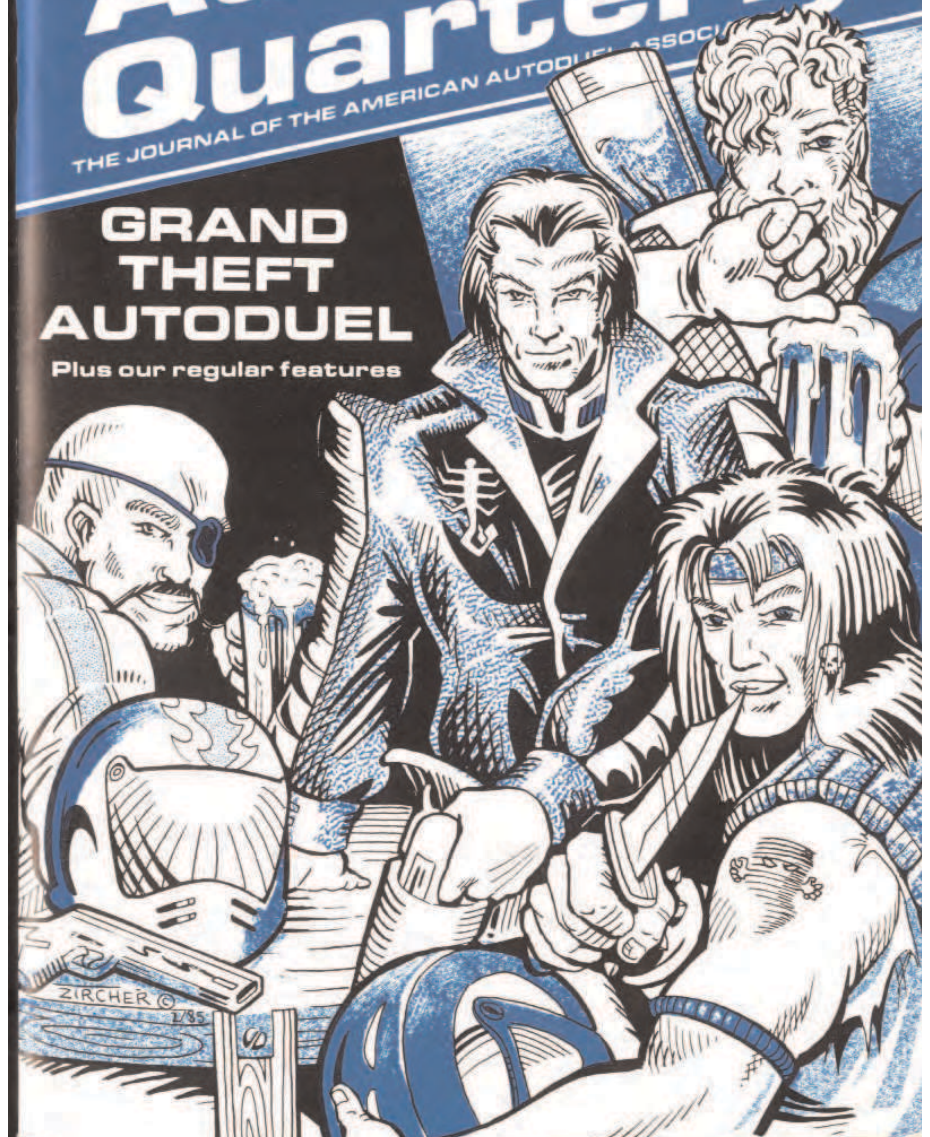
\$3.00

Autoduel Quarterly

THE JOURNAL OF THE AMERICAN AUTODUEL ASSOCIATION

GRAND THEFT AUTODUEL

Plus our regular features



SJG002018

EXHIBIT 5

Declaration of Phil Reed

some day you could print a scenario with an Ogre Mark V against The Brotherhood.

— Matthew Tedder
Florence, SC

That building stuff sounds awfully complicated; I think I'll pass the assignment on to some bright-eyed reader. Same with the South Carolina edition of the "Road Atlas" — if you want to see it, write it! Same with four-wheel drives. But an Ogre vs. the Brotherhood? Come on, now, you forget that a) the Ogre can withstand direct hits from nuclear weapons — what's a recoilless rifle going to do? and b) the Ogre fires nuclear weapons — roughly a 2,000,000d6 weapon with a half-mile burst radius. The "con-jetti" rule would definitely apply.

About back issues: We are not selling back issues of any of our magazines any more, with the exception of ADQ. To get back issues of Space Gamer, Fantasy Gamer, or Fire & Movement, contact your local hobby shop (there's still a lot of them floating around out there) or try to catch us at a convention.

— SDH

First off let me say that issue no. 3 was great! I was especially impressed with the cover artwork by Speed Webber. It had a nice, menacing effect. Among other things I liked was the article on speeding. I can't wait to try it out on the open road! The design guide is very helpful, and it's made me rethink the way I design vehicles. Some nice work and good comments went into that article.

The funny thing about the new products section is that I was going to submit some ideas about a roll cage and fireproof armor (I hadn't worked out the stats, but the ones you printed looked fine!). Don't worry, you haven't thwarted me completely. I'm submitting a couple more new products with this letter...

I like the random arena idea, but I think I'd make my table a little more complicated. Still, it's a nice idea.

I haven't had a chance to play a scenario using the "Chassis & Crossbow" rules, but I think I already see about a half-dozen questions and clarifications I need to ask you about. But I'll save 'em until I look over the rules more closely.

One of the things I'd like to see in your magazine is more small scenarios (i.e., those with only a few, like two or three, vehicles or people on the battleground at a time). You well know as you increase the number of playing pieces on the board, the playing time goes up dramatically. Most of my spare time goes into studying, and when I do play I like to squeeze

in an hour here, maybe an hour and a half there, not 4–5 hours in one sitting. Also, most of your scenario maps are huge! We've got these small desks cluttered with books and homework and unfinished pizzas and it's hard to push all that aside to put a map down. A map that would fit on a regular 22" x 16" desk pad would be great! The "Convoy" scenario in issue #1 is my idea of a perfect scenario: small playing board (just a few road sections); few playing pieces; and it's a series of encounters (so you can play a few, put it up, then come back and play the rest). So I guess what I'd really like to see is some more scenarios of the "Convoy" variety...

One thing that's sort of annoying is the tiny "Handling" and "Speed" markers. We're always losing, dropping, misplacing, etc., etc., them; and invariably it happens during a critical point in our games. One thing you might be interested in making is this:

Get one of those "write-on/wipe-off" memo boards about the size of your ADQ magazine. Print on it, in permanent ink, a vehicle record sheet (with handling and speed track). Now all you have to do is mark your speed, handling, etc. with a "write-on/wipe-off" pen. The advantages of this are obvious: You don't have to worry about losing those damn little markers, so you don't have to keep these sheets flat and separate. You can stack 'em and hold 'em in front of you and pass 'em around when the referee wants to check something, and all sorts of things... Anyway, if you do decide to market something like this, I'll purchase a couple!!

— Mike Emrick

My friends and I are planning to set out on a marathon *Car Wars* game. Our goal would be in the field of 50 to 100 hours playing time. We come to you for any advice or help you could give us. Our group of asphalt gladiators would graciously accept any guidance you could give us. As I have said before, we are still in the planning stages. We also want to set a record for continuous play of *Car Wars*.

— Ron Mathewson
Wharton, NJ

Why not? A good format to use might be a multi-elimination tournament, with lots of preliminary rounds, winner's rounds, survivor's rounds, and finals. Or for the truly strong of heart: a cross-country road race, starting in New York and ending in Los Angeles. All you need is an atlas, and someone to devise lots of encounters. And don't forget the No-Doz. Good luck.

— SDH

Autoduel Quarterly

Prometheus Games presents

AUTODUEL

THE OFFICIAL PLAY-BY-MAIL VERSION
OF THE *CAR WARS* GAME SYSTEM!

**YOU become the driver in an arena
battle to the death. Five victories make
you an Ace — with lower turn fees!
Experienced characters also gain wealth
and skill. Dead characters are replaced
free — no new setup charge. When
you win a duel, your next turn is free.**

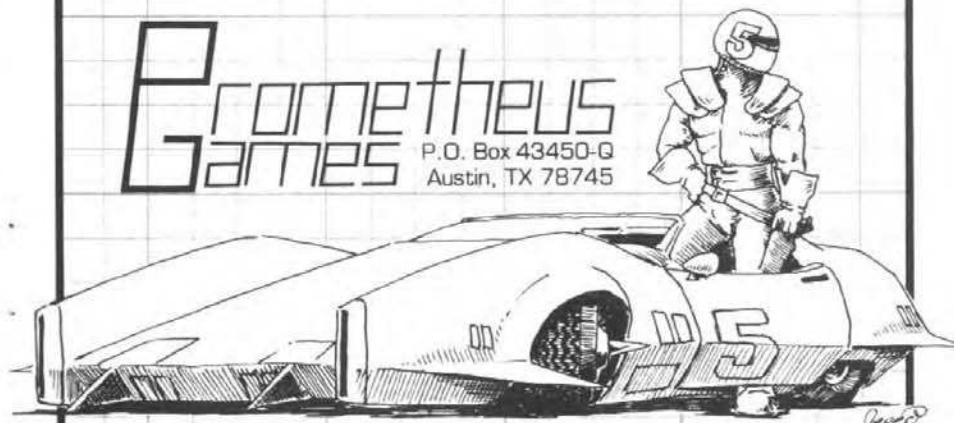
Setup, rulebook, and first turn \$5.00

Later turns \$2.25 each

[\$2.00 for Aces, \$1.75 for Double Aces]

Rulebook only \$1.00

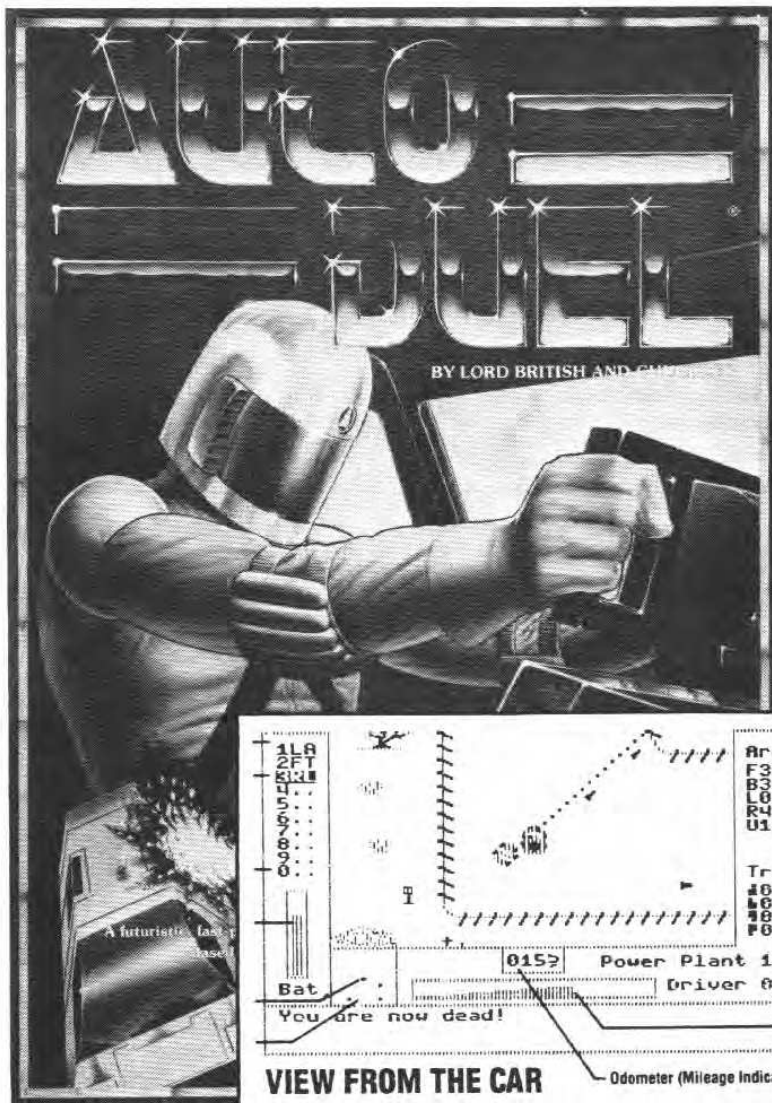
Prometheus
Games P.O. Box 43450-G
Austin, TX 78745



AUTODUEL and CAR WARS are trademarks of Steve Jackson Games.

EXHIBIT 6

Declaration of Phil Reed



VIEW FROM THE CAR

Iron:Harvey
 Car:HOPEFUL
 Money:5775348
 Cost:\$010670
 Body:Pickup
 Chas:Ex. Heavy
 Susp:Heavy

Item	Pt	Loc
Plant		
Super	12	Ctr
Tires		
Hvy Dt	06	F-L
Hvy Dt	06	F-R
Hvy Dt	06	B-R
Weapons		An

CAR WARS Enters the Computer Age

An Interview with Lord British and Chuckles

by Scott Haring

The December 1985 release of the *Autoduel* computer game by Origin Systems, Inc., was met with great anticipation by gaming and computer fans alike. It also culminated 18 months of hard work by the game's designers, Lord British and Chuckles.

Lord British — aka Richard Garriott — and Chuckles — aka Chuck Bueche — both grew up in Houston, where they attended Clear Creek High School together. After a stop at the University of Texas, they (along with Richard's brother, Robert) now run one of the most successful computer game companies in the industry.

Autoduel is not a literal translation of *Car Wars* for the computer. "We weren't looking for a boardgame, step-by-step implementation of *Car Wars*," Bueche said. "We were looking for a roleplaying game with the flavor of the *Car Wars* world."

"Most of the time, when people get together to play *Car Wars*, they play in an arena or from point A to B," Bueche said. *Autoduel* uses a number of different arenas, all in different towns, as well as additional features like a casino, and a free-lance courier system that the players have to figure out before they can use it to full advantage.

Garriott (or Lord British) first came upon the computer gaming scene in 1979 when the now-defunct California Pacific published his *Akalabeth* game. Garriott was 18, just out of high school, and an instant star. "The industry was very small at that time — only a dozen or so designers. About half of those people became really well known," Garriott said. His other designs include the now-classic

Ultima series; *Ultima I* for California Pacific, *Ultima II* for Sierra On-Line, and *Ultima III* and *IV* for Origin Systems.

Bueche and Garriott were roommates at the University of Texas, where they both studied electrical engineering. Garriott continued to work on new games while he was in school, and Bueche took notice. "I saw how lucrative it was for Richard, and thought I'd give it a shot, too," he said. Bueche's design credits include *Adrenalin Freeway* (for California Pacific), *Laf Pak*, *Lunar Leaper*, and *Jawbreaker II* (for Sierra On-Line), and *Caverns of Callisto* (for Origin Systems), as well as numerous conversions of *Ultima II*, *III*, and *IV* for various computer systems.

Three years ago, Garriott and Bueche dropped out of school and formed Origin Systems. Originally based in Houston, the company now operates out of Manchester, New Hampshire. "At first, Robert was commuting three weeks a month down to Houston," Garriott said. The decision was made to move north so that Robert could spend more time with his wife, who had a good job in the area.

Although it's turned out very well, Garriott originally wasn't sure that the move to private entrepreneur was a smart one. "The decision to drop out of school was not an easy thing to do," he said. "A lot of it (the company's success) is being in the right place at the right time."

Garriott first met Steve Jackson when both were active in the Austin chapter of the Society for Creative Anachronism. Their mutual interest in gaming reinforced their friendship — Garriott was a frequent participant in the now-legendary Friday night playtests at the original Steve

Jackson Games offices. Garriott remembers, "From day one, Steve was trying to get me to do computer versions of his games." Origin Systems plans computer versions of SJ Games' *Ogre* and *Undead* for 1986.

Autoduel was originally scheduled for release in 1984, but the project took considerably longer than anticipated. Garriott said, "To do smooth, scrolling graphics is an extremely non-trivial task. Those shapes take up a humongous amount of memory." The trick, Garriott said, was to get a working graphics package that still leaves enough memory for the game itself to work without large delays.

"There's a lot to account for there — weights, handling classes . . . it's all very data intensive," added Bueche, who did the primary writing on *Autoduel*. "A lot of the detail-y items are not available." The weapons available are also limited — not every Uncle Albert gadget or latest weapon can be used in *Autoduel*.

The biggest adaptation a *Car Wars* player will have to make when he sits down at the computer to play *Autoduel* will be adjusting to real-time combat. No longer can a player meticulously plot his moves so that maximum firepower is brought to bear on his opponents at all times. Because of that, Garriott has found that most players prefer to mount their weapons to the front or back and fight fighter-pilot style, because side mounted weapons are too hard to use effectively on an opponent in real-time movement.

Vehicle construction works in *Autoduel* the same way it does in *Car Wars* — the designer must juggle weight and spaces and cost to come up with the most effective design. The movement system is very similar, too. Bueche explains, "I've kept a barometer of sorts in the program that tells the computer how radically the player is driving. As the barometer goes up, the chance of crashing goes up." High speed and radical maneuvers move the barometer up; low speed and straight movement move it down. When the baro-

meter hits a certain point, a chance for losing control and crashing is introduced; at another, even higher point, the crash is automatic.

Another thing that added to the complexity of the programming job was the original design. "He (Steve Jackson) writes games without a computer in mind," Garriott said. This is not a bad thing, until it comes time to put the game on a computer. The decisions that have to be made and the calculations necessary to run the game are not the type a computer does easily, so while people have no trouble running the game, getting a computer to do it is more difficult.

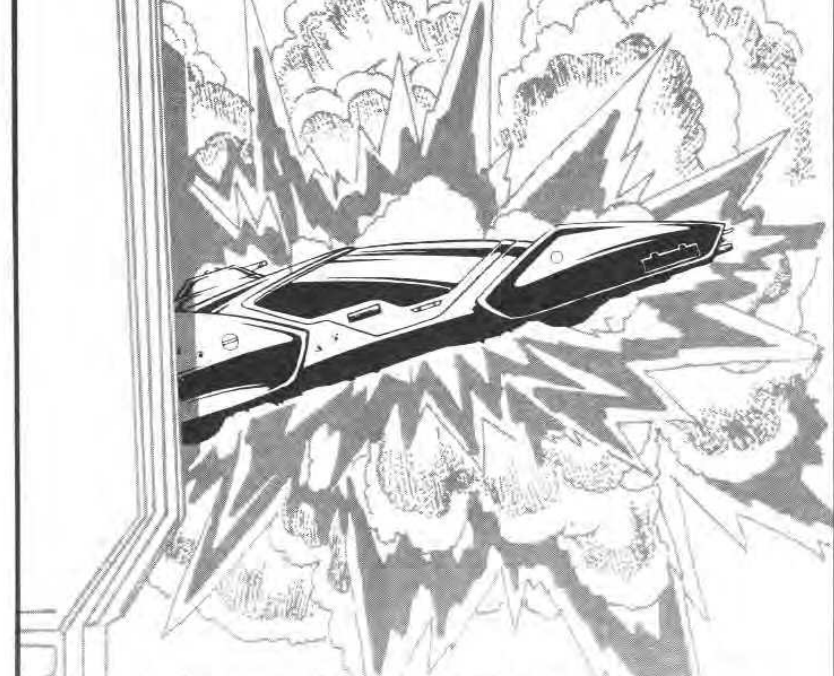
Autoduel is currently available only for the Apple II series. Origin did the Apple version first, Garriott said, "mainly because all our programmers work on it. It's our preferred computer in-house. One advantage of programming on the Apple first is that translation is easy." Garriott estimated that versions for other machines will be available late this summer. Origin Systems plans *Autoduel* versions for the Commodore 64 and Amiga, Atari 800 and ST machines, and the Macintosh.

The trick to computer game design, Garriott and Bueche agree, is to have a good game to begin with. "There are a lot more good programmers than good game designers," Bueche said. In *Car Wars*, the duo had one of the most popular science-fiction games ever. The game has only been out for two months at this writing, so the computer gaming press has not published any reviews of the game. But *Autoduel* sales are strong, Garriott said, and that is cause for optimism.

Car Wars has spawned dozens of supplements, expansion sets, and even a magazine. *Autoduel* only covers a small section of the Northeast. Are more games in the future? "It's really unsure at this point," Garriott said. "It's a game that sequels can be done for, but it depends on long-term sales."

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Roleplaying in the world of Car Wars

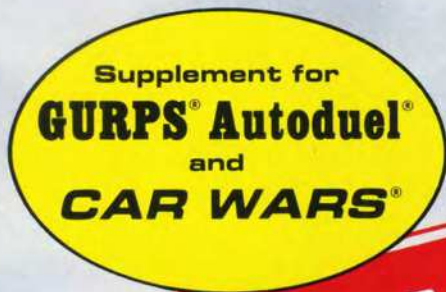


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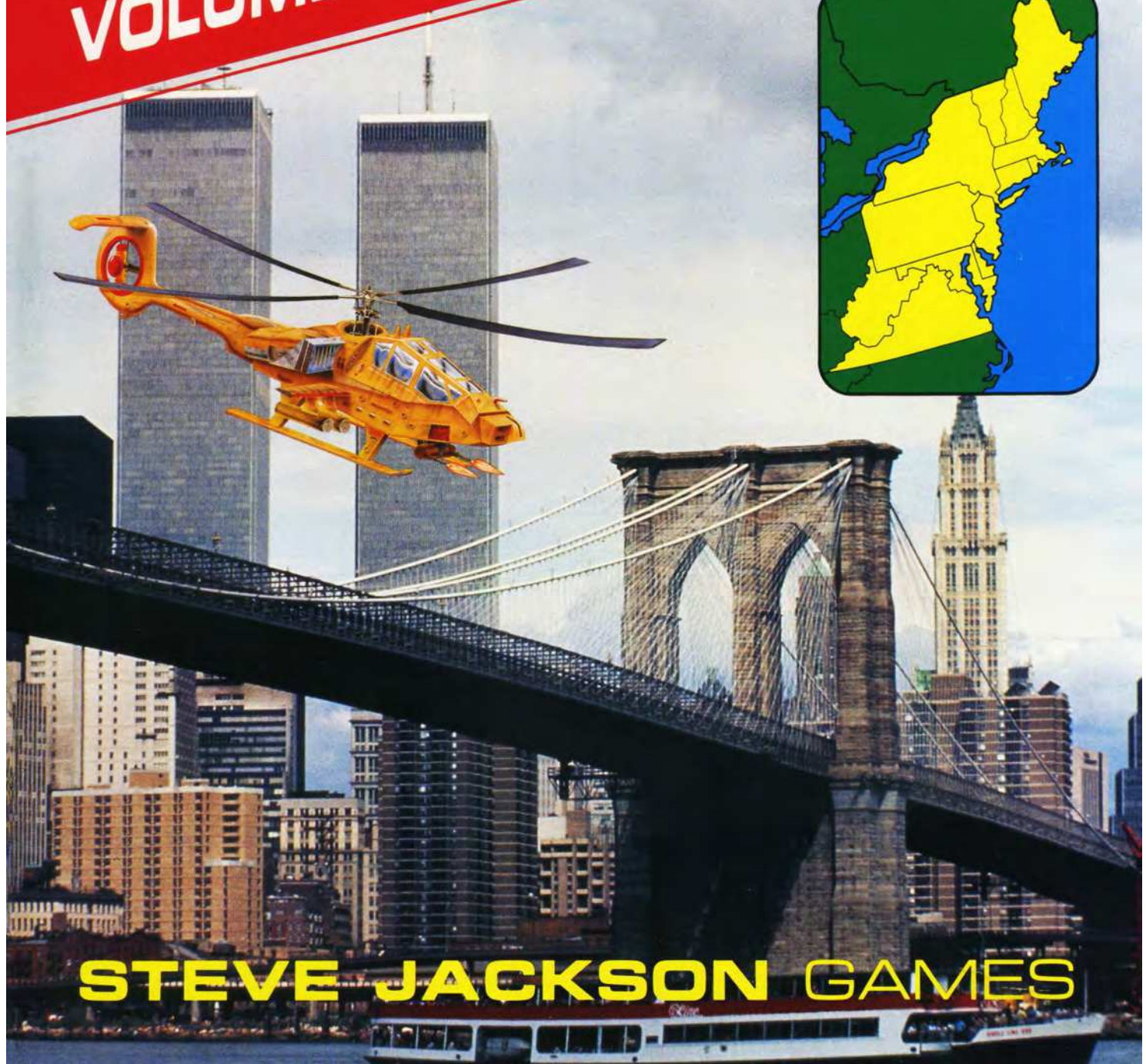
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The AADA Road Atlas and Survival Guide
VOLUME ONE: THE EAST COAST



STEVE JACKSON GAMES

Supplement for
GURPS® Autoduel®
and
CAR WARS®

The AADA Road Atlas and Survival Guide **VOLUME TWO: THE WEST COAST**



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The AADA Road Atlas and Survival Guide
VOLUME THREE: THE SOUTH



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The AADA Road Atlas and Survival Guide **VOLUME FOUR: AUSTRALIA**



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The AADA Road Atlas and Survival Guide VOLUME FIVE: THE MIDWEST



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The AADA Road Atlas and Survival Guide VOLUME SIX: THE FREE OIL STATES

The AADA Road Atlas Volume Six: The Free Oil States



By Stephen Beeman

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SJG001957

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The AADA Road Atlas and Survival Guide VOLUME SEVEN: MOUNTAIN WEST



By Jeff George

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CAR WARRIORS™

36 pre-generated duellists, MONDOs, troopers, bikers and dregs for your *GURPS Autoduel* campaign.

A selection of 100-point characters make “instant” player characters, and busy GMs will delight in the variety of non-player characters.

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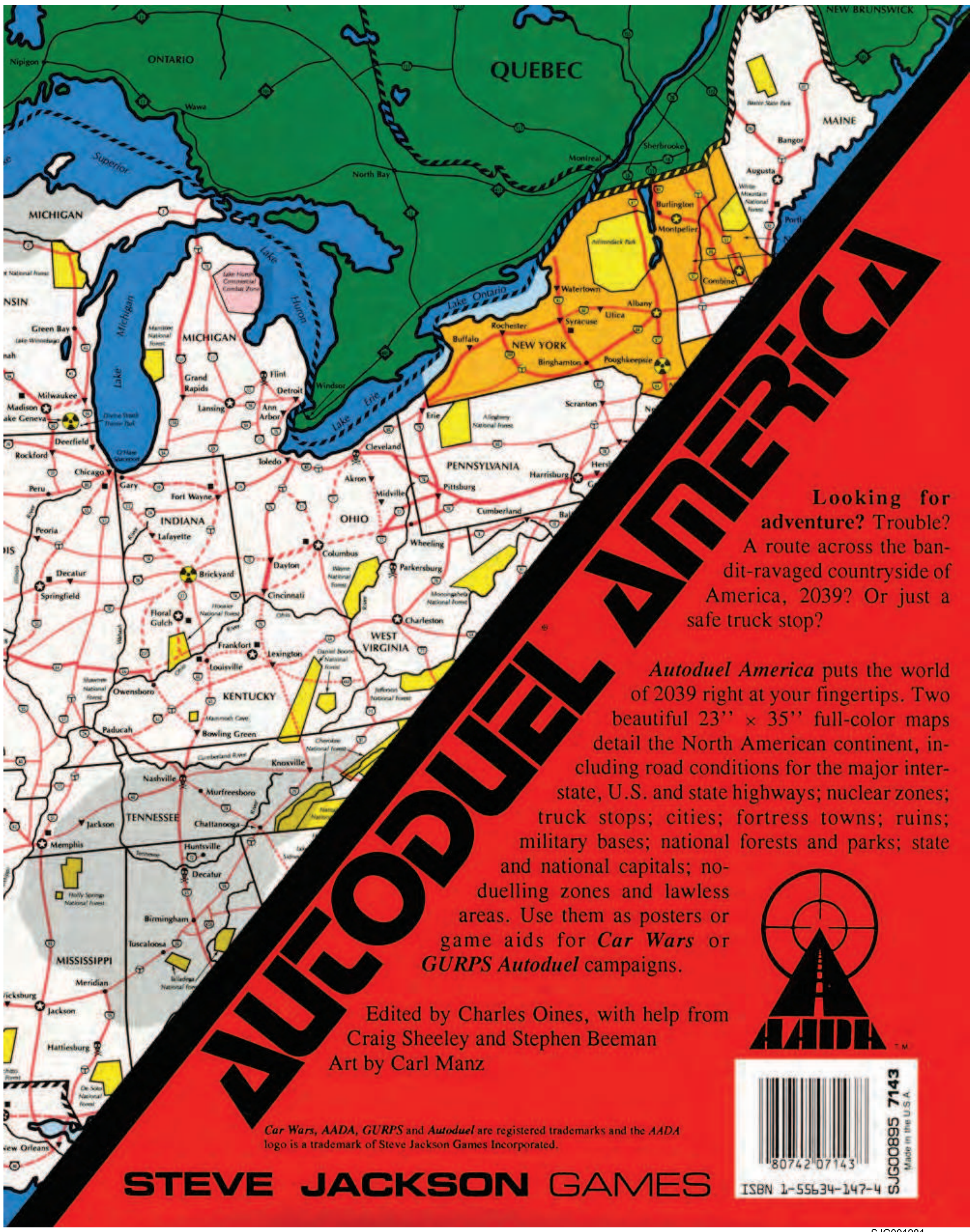
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military bases; national forests and parks; state
and national capitals; no-
duelling zones and lawless
areas. Use them as posters or
game aids for *Car Wars* or
GURPS Autoduel campaigns.

Edited by Charles Oines, with help from
Craig Sheeley and Stephen Beeman
Art by Carl Manz

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ISBN 1-55634-147-4

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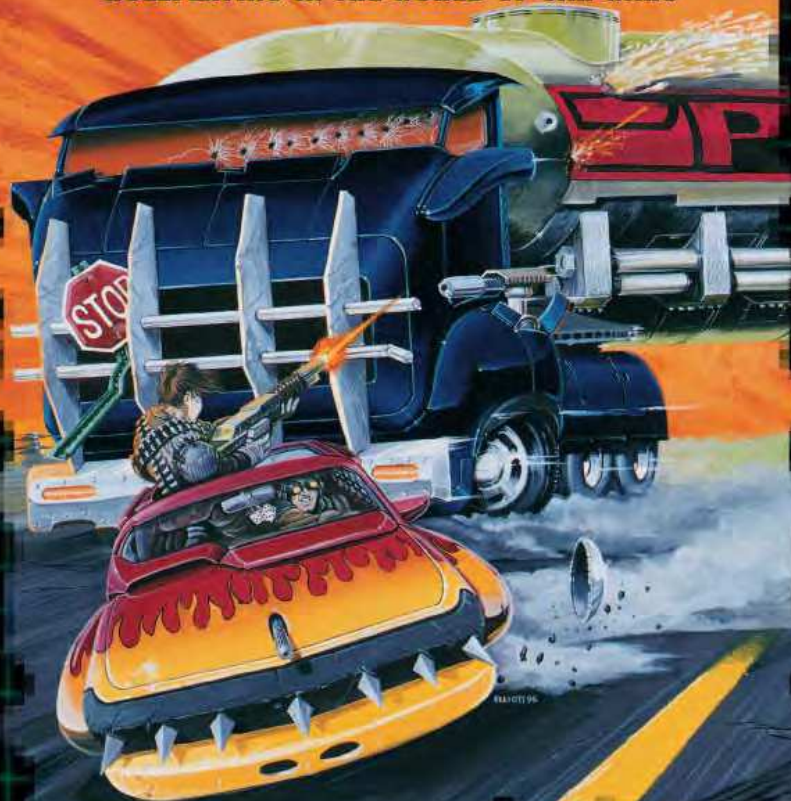
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G U R P S[®]

AUTODUEL

ROLEPLAYING IN THE WORLD OF CAR WARS



SECOND EDITION

BY CHRISTOPHER J. BURKE AND ROBERT J. GARITTA

STEVE JACKSON GAMES

**LIFE IN THE FAST LANE . . .
. . . JUST GOT FASTER!**

GURPS Autoduel was one of the first worldbooks ever published for the *GURPS* system – over ten years ago! Its post-apocalyptic world,



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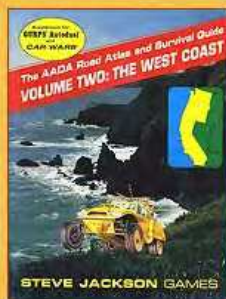
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MUNCHKIN KITTENS DON'T BE FOOLED...
THEY'RE ADORABLE, BUT DEADLY.



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— Steven Marsh

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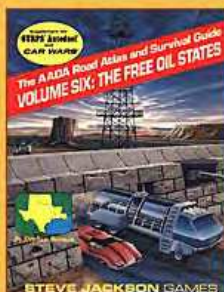
STEVE JACKSON GAMES NEWS

May 24, 2014: More AADA Guides Available Virtually On Warehouse 23



Our nonstop digital biker gangs have been digitizing more classic AADA guides and uploading them onto Warehouse 23. Fans of *Car Wars* and *GURPS Classic: Autoduel* should direct their PDF-perusing apparatus to the following guides:

- [AADA Road Atlas V4: Australia](#)
- [AADA Road Atlas V5: The Midwest](#)
- [AADA Road Atlas V6: The Free Oil States](#)



Each guide includes a history of the region, a look at locales of interest, a trove of campaign advice, and even mini-scenario ideas and a full-fledge adventure. Whether you're looking at the relative calm of the land down under, the post-grain ganglands of the Midwest, or the frenetic folks of the Free Oil States, you're sure to get the edge you need to survive another day. Download them now, only from Warehouse 23!

-- Steven Marsh

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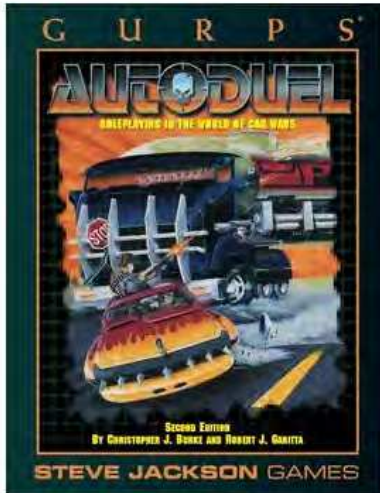
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Steve Jackson Games / GURPS / GURPS 3rd Ed.

GURPS Classic: Autoduel

★★★★☆ (15)

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GURPS Autoduel was one of the first worldbooks ever published for the *GURPS* system - over ten years ago! Its post-apocalyptic world, based on the classic *Car Wars* boardgame, was a fan favorite as players faced a world devastated by war, famine and despair . . . on lawless highways where the right of way went to the biggest guns.

Ten years later, things have gotten better in Autoduel America - but not much. This Second Edition is 32 pages longer than the original, and includes:

- A detailed history and description of "Autoduel America";
- An updated and expanded "AADA Road Atlas and Survival Guide";
- Vehicle construction rules completely compatible with *GURPS Vehicles*, 2nd Ed., with a dozen sample vehicles;
- Complete character creation guidelines, including guns, equipment and gadgets galore;
- Loads of campaign ideas for everything from a corporate autoduell team to a lone wolf vigilante, and more!

And remember . . . drive offensively!

Written by Christopher J. Burke / Robert J. Garitta

RECOMMENDED



GURPS Classic: Vehicles



GURPS Classic: Vehicles Expansion 1



AADA Road Atlas V1: The East Coast



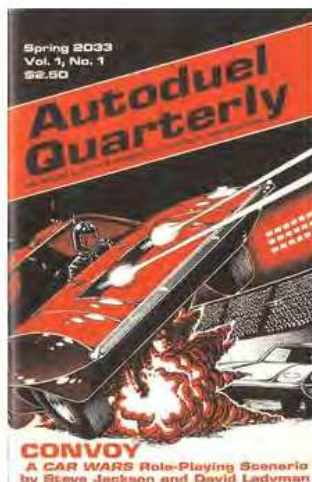
Autoduel America Map


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Steve Jackson Games / Car Wars / Autoduel Quarterly

Autoduel Quarterly #1/1

★★★★★ (4)

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This is the very first *Autoduel Quarterly*, the *Car Wars* magazine, published in March, 1983. It features "Convoy," a scenario by Steve Jackson and David Ladyman, plus Aaron Allston's look at Midville, OH, the home of the *Sunday Drivers* supplement. All that plus vehicle designs, new equipment courtesy of Uncle Albert, letters, columns, and rules answers in ADQ&A. Drive Offensively!

RECOMMENDED



Car Wars Midville



Car Wars Convoy

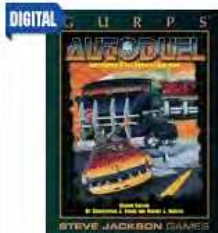


Uncle Albert's 2035 Catalog



Car Wars Classic

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GURPS Classic: Autoduel



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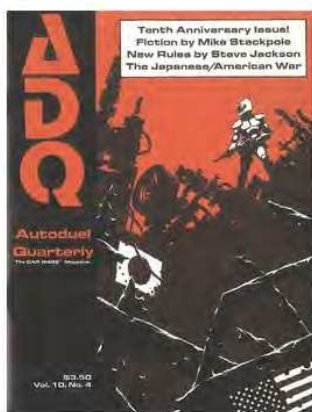
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Steve Jackson Games / Car Wars / Autoduel Quarterly

Autoduel Quarterly #10/4

★★★★★ (3)

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Autoduel Quarterly Issue 10/4 was published in the winter of 1992, and was the last issue of ADQ ever. After this issue, coverage of *Car Wars* would continue in *Pyramid* magazine. *Autoduel Quarterly* went out with a bang, however, with "The Oldest Trick in the Book," great autoduellling fiction from Mike Stackpole, along with some *Car Wars* gadget designs from Steve Jackson, a complete report on the outbreak of war between the United States and Japan in the autoduellling world, and a 10-year index of all the articles in *Autoduel Quarterly*. All that, plus letters, columns, rules answers in ADQ&A, and more!

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GURPS Classic: Horror: Zombietown, U.S.A.

(13)

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Black Lake, California, the idyllic small town you've always dreamed of... clean air, sparkling water and a scenic countryside... friendly townfolk and an easy life style... a perfect haven where everything is beautiful and peaceful!

Almost.

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As the investigators unfold the strange events shrouding Black Lake, they are drawn deeper and deeper into a complex web of horror, uncovering a sinister plot that is paralyzing the whole town. Only they can foil the plot that threatens to turn Black Lake into *Zombietown U.S.A.*

The 64 pages of *Zombietown U.S.A.* feature:

- A modern-day *GURPS Horror* adventure.
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- Detailed descriptions and stats for dozens of NPCs and establishments.
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Written by Barry Link

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GURPS Horror
Fourth Edition



GURPS Zombies



GURPS Classic: Autoduel



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V2: *The West Coast*

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AADA Road Atlas V3: The South



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AADA Road Atlas V7: Mountain West



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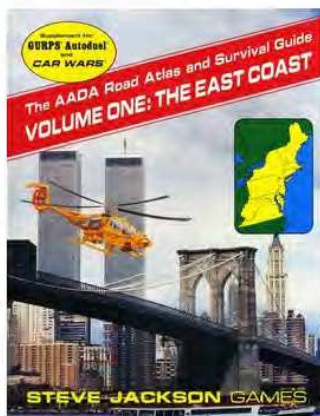
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AADA Road Atlas V1: The East Coast

★★★★★ (1)

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PDF - \$2.99

Soft Cover - \$6.95 Out Of Print

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67-page PDF

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Civilization Is A Relative Term

The East Coast is easily the tameest, safest, most fully recovered region in the United States. There are even a few areas where weapons aren't necessary!

But the region is still dangerous, perhaps more so because of the sense of false security that is so easily developed. How can you tell the safe stretches of highway from the ambushes? Consult . . . *The AADA Road Atlas and Survival Guide, Volume One: The East Coast*.

The East Coast is the first volume of an ambitious project by your American Autoduel Association. *The AADA Road Atlas and Survival Guide* will tell you everything you need to know about each region, from the roads and the police to the best attractions and even food.

Find out the real story behind:

- The Hill Clans of Massachussetts.
- The Mild Ones, the most polite (and efficient) cycle gang around.
- Drang Nach Iowa: what it was and why it failed.
- The Newark Police.
- The Pennsylvania Highway Authority.
- and more . . .

But *The AADA Road Atlas and Survival Guide* is more than just an atlas of the East Coast. It also contains the following useful material for fans of *GURPS Autoduel* and *Car Wars*:

- A complete rundown on EDSEL, the Eastern Driving Safety Enforcement League. Includes their philosophy, organization, equipment, tactics, and a state-by-state list of EDSEL chapters -- complete with information on relative popularity, strength, and each chapter's leader.
- Campaign guidelines for *GURPS Autoduel* GMs, with advice for setting an adventure in any part of the East Coast.
- Complete helicopter rules for *GURPS*.
- Ten mini-adventures for *GURPS* or *Car Wars*, each set in a different part of the region.
- "Escape from Poughkeepsie," a complete adventure for *GURPS Autoduel*. Can you survive the bombed-out ruins, radioactive hot spots, and the "Townies" long enough to recover a disk lost for 25 years?

(This is a digital reprint of a supplement designed for *Car Wars* and *GURPS Third Edition*.)

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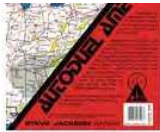

AADA Road Atlas V2:
The West Coast

Autoduel America
Map

GURPS Classic:
Autoduel


Mini Car Wars


GURPS Classic:
Deathwish



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Autoduel America Map



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Car Wars Expansion Set 4 -
Armadillo Autoduel Arena



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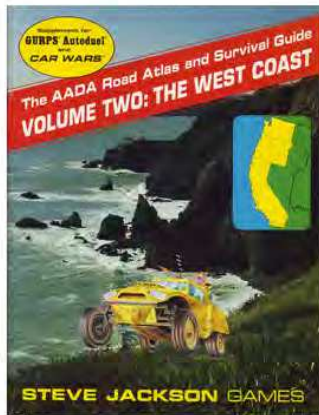
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AADA Road Atlas V2: The West Coast

★★★★★ (1)

\$2.99

PDF - \$2.99

Soft Cover - \$8.96 Out Of Print

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Contents

67-page PDF

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Publisher	Steve Jackson Games
Stock Number	SJG30-6302
UPC / ISBN	1556340842
Weight	0.44 lbs

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Go West, Young Duellist

For nearly 200 years, the West Coast has lured the young and adventurous with many promises and beautiful locales. But the West Coast is not paradise. Danger lurks behind every corner, a threat behind every wheel. How can a visitor know where the beauty ends and the beast begins? Consult . . . *The AADA Road Atlas and Survival Guide, Volume Two: The West Coast*.

The West Coast is the second volume (following the popular *East Coast* edition) of an ambitious project by your American Autoduel Association. *The AADA Road Atlas and Survival Guide* will tell you everything you need to know about each region, including the roads, political situations, police procedures, tourist attractions, and even the best restaurants and truck stops.

Find out the real story behind:

- Los Angeles's Civic Senate: Is it democracy at its finest, or anarchy at its worst?
- Kreegan's Edge, a land/sea bandit gang terrorizing Northwest shipping.
- The Orange County Agricultural Enclave.
- Aqua Sueve, the most enigmatic screen star ever.
- and more . . .

But *The AADA Road Atlas and Survival Guide* is more than just an atlas of the West Coast. It also contains the following valuable material for fans of *GURPS Autoduel* and *Car Wars*:

- A complete description of the Scout Commando Corps, including their organization, activities, ranks, and even merit badges!
- Campaign guidelines for *GURPS Autoduel* GMs, with advice for setting an adventure in any part of the West Coast.
- Mini-adventures for *GURPS* or *Car Wars*, each set in a different part of the region.
- "Flash of Steel," a complete adventure for *GURPS Autoduel*. Harry Coppola's latest budget-busting epic could be the biggest money-maker in Hollywood history -- or the biggest flop. When the only copy of the final edit is stolen by one of the nastiest cycle gangs in Los Angeles, are you tough enough to get it back?

(This is a digital reprint of a supplement designed for *Car Wars* and *GURPS Third Edition*.)

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**AADA Road Atlas V3:
The South**

**GURPS Classic:
Autoduel**

Mini Car Wars

**The AADA Vehicle
Guide**

**AADA Road Atlas V5:
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AADA Road Atlas V1: The East Coast



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Autoduel America Map



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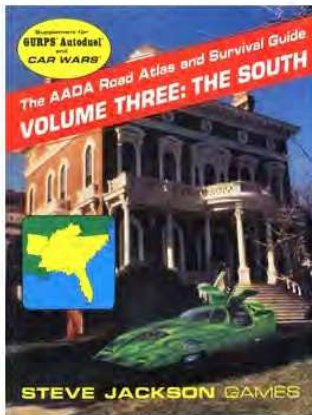
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The South Will Rise Again

History has not been kind to the southern United States, but through it all, the South has fought back with fierce pride and determination. Visitors will find much to admire in the South, but there is much to fear as well. How does the traveler know which way to turn? Consult . . . *The AADA Road Atlas and Survival Guide, Volume Three: The South*.

The South is the third volume (following the popular editions on *The East Coast* and *The West Coast*) of an ambitious project by your American Autoduel Association. *The AADA Road Atlas and Survival Guide* will tell you everything you need to know about each region, including the roads, politics, police, tourist attractions, and even the best restaurants and truck stops.

Find out the real story behind:

- The Confederate Commando Corps, an Arkansas-based group dedicated to the return of the "glory days" of the South.
- South Carolina's Governor-For-Life Charles Jordan. Is he a hated tyrant, or the region's last hope for stability?
- The Goremongers, a cycle gang that controls a large chunk of Alabama.
- Los Disneys, the new capital of Florida.
- and more . . .

But *The AADA Road Atlas and Survival Guide: The South* is more than just an atlas of the South. It also features the following valuable material for fans of *GURPS Autoduel* and *Car Wars*:

- A complete rundown on criminal gangs of every type, from rag-tag street gangs to disciplined cycle marauders, and even the Mafia!
- Campaign guidelines for *GURPS Autoduel* GMs, with advice for setting an adventure in any part of the South.
- Mini-adventures for *GURPS* or *Car Wars*, each set in a different part of the region.
- "Intrigue in Los Disneys," a complete adventure for *GURPS Autoduel*. Florida Governor Bart Lesion fiddles while Rome burns; his people live in squalor while he uses their tax money to expand his fine art collection. When you are recruited to end the governor's reign "with extreme prejudice," are you saving thousands of lives, or are you just a pawn in a bigger, deadlier game?

(This is a digital reprint of a supplement designed for *Car Wars* and *GURPS Third Edition*.)

RECOMMENDED


AADA Road Atlas V2:
The West Coast

AADA Road Atlas V4:
Australia

The AADA Vehicle
Guide Volume 2

GURPS Classic:
Autoduel


Mini Car Wars

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AADA Road Atlas V1: The East Coast



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AADA Road Atlas V2: The West Coast



\$5.99

Autoduel America Map



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Car Wars Expansion Set 4 - Armadillo Autoduel Arena



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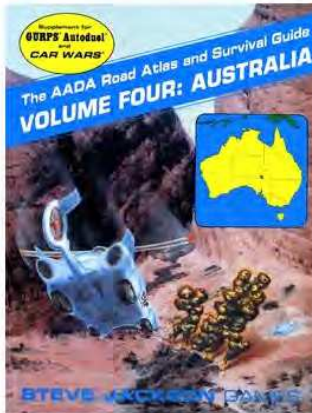
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EXHIBIT 24

Declaration of Phil Reed



Steve Jackson Games / GURPS

AADA Road Atlas V4: Australia

★★★★★ (1)

\$2.99

- PDF - \$2.99
- Soft Cover - \$6.95 Out Of Print

1 ADD TO CRATE

Contents

68-page PDF

File Size	69.2 MB PDF
Preview	Download (10.9 MB)
Publisher	Steve Jackson Games
Stock Number	SJG30-6304
UPC / ISBN	1556340958

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G'Day, Duel Mate!

The economic superpower of 2038, Australia has triumphed during the crises that have ruined a world. Aussies eat "real" (non-algae) food, drive petrol-guzzling cars, and support national and regional duel circuits. But how can visitors to the Land Down-Under know what perils await? Consult . . . *The AADA Road Atlas and Survival Guide, Volume Four: Australia*.

Australia is the fourth volume -- following *The East Coast*, *The West Coast*, and *The South* editions -- of an ambitious project by your American Autoduel Association. *The AADA Road Atlas and Survival Guide* will tell you everything you need to know about this continent-sized nation, including roads, politics, police, quarantine regulations, and which truck stops are overpriced.

Learn the truth behind:

- Anarchy in New South Wales*. Do cycle gangs control the countryside? Do they "broker" travel arrangements?
- Forced-labour gangs in Queensland*. Are the Asian refugees really "slaves" in the cane fields?
- Premier Harrington, the autocrat of Victoria*. Where will martial-arts training for poor city youth lead?
- Triad and the Khmer Noir*. Does a refugee-liberation organization really exist? Has an Oriental crime syndicate penetrated Australian society?
- More!* The AADA's first guide to Antarctica! A dictionary of Aussie slang! The *Contents of Stomach* form -- no tourist should be without this!
- Plus even more.**

The AADA Road Atlas and Survival Guide: Australia is more than just an Australian atlas. Perceptive duellists should check out these features perfect for aficionados of *GURPS Autoduel* and *Car Wars*:

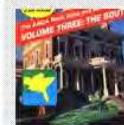
- Complete fuel rules for petrol (for *GURPS Autoduel*) and ethanol.
- Guidelines for campaigning down-under, including a guide to Australia's native organizations.
- Mini-adventures for *GURPS* or *Car Wars*, including a native Aussie sport: *test autoduel*.
- "2,000 Metres, Straight Down," a complete adventure for *GURPS Autoduel*. As a member of a duelling team in the nationally televised *Death Duel Sunday*, can you outwit the forces that seek to control you?

From the pyramids of Sydney to the oil fields of Antarctica, you can't find a better reference work than *The AADA Road Atlas and Survival Guide, Volume Four: Australia*.

(This is a digital reprint of a supplement designed for *Car Wars* and *GURPS Third Edition*.)

Written by Gary Makin / Steve Reynolds / Greg Rickards

RECOMMENDED


AADA Road Atlas V3:
The South

AADA Road Atlas V5:
The Midwest

The AADA Vehicle
Guide Volume 3


Mini Car Wars


GURPS Classic:
Autoduel



\$2.99

AADA Road Atlas V1: The East Coast



\$2.99

AADA Road Atlas V2: The West Coast



\$2.99

AADA Road Atlas V3: The South



\$5.99

Autoduel America Map



\$2.99

Car Wars Expansion Set 4 - Armadillo Autoduel Arena



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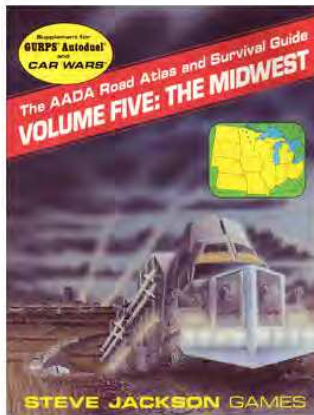
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EXHIBIT 25

Declaration of Phil Reed



Steve Jackson Games / GURPS

AADA Road Atlas V5: The Midwest

★★★★★ (1)

\$2.99

PDF - \$2.99

Soft Cover - \$7.95 Out Of Print

1 ADD TO CRATE

Contents

68-page PDF

File Size 76.9 MB PDF

Preview Download (7.14 MB)

Publisher Steve Jackson Games

Stock Number SJG30-6305

UPC / ISBN 1556341059

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For a Fistful of Grain . . .

The Midwest is the fifth volume of an ambitious project by your American Autoduel Association. *The AADA Road Atlas and Survival Guide* will tell you everything you need to know about each region, including the roads, politics, police, tourist attractions, AADA advisories, as well as the best restaurants and truck stops.

Find out the real story behind:

- The Church of America and its charismatic leader, Donald LaMothe
- KC-1's ruthless civic ordinances
- The Grain Blight
- Cattle drives of the 21st century
- Corporate feuds of Detroit
- and more . . .

The AADA Road Atlas and Survival Guide is more than just an atlas of the Midwest. It also features the following valuable material for fans of *GURPS Autoduel* and *Car Wars*:

- A complete description of the three types of Fortress Towns that protect citizens from marauding gangs.
- Campaign guidelines for *GURPS Autoduel* GMs, with advice for setting an adventure in any part of the Midwest.
- Mini-adventures for *Car Wars* or *GURPS*, each set in a different part of the region.
- "Murphys' Law," a complete adventure for *GURPS Autoduel*. The Murphys have struck a blow for human freedom against the accursed machines of KC-1. You are caught in the middle, and the only way to buy your own personal freedom lies in a chase across the Midwest. Can you stop the Murphys before they produce a bigger bang than they bargained for?

(This is a digital reprint of a supplement designed for *Car Wars* and *GURPS Third Edition*.)

Written by Craig Sheeley

RECOMMENDED


AADA Road Atlas V4:
Australia

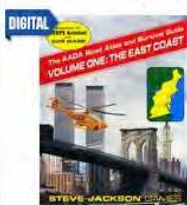
AADA Road Atlas V6:
The Free Oil States

Car Wars Expansion
Set 6 - The AADA
Vehicle Gui...


Mini Car Wars


GURPS Classic:
Deathwish

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AADA Road Atlas V1: The
East Coast


\$2.99

AADA Road Atlas V2: The
West Coast


\$2.99

AADA Road Atlas V3: The
South


\$2.99

AADA Road Atlas V4:
Australia


\$2.99

Car Wars Expansion Set 4 -
Armadillo Autoduel Arena

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West Coast

South

North

Atmosphere Adventure Arena



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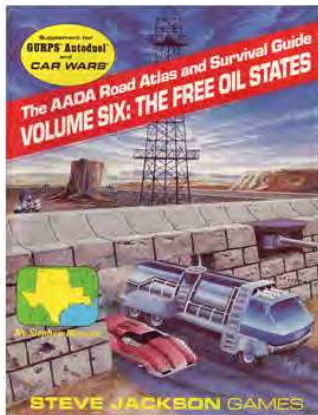
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EXHIBIT 26

Declaration of Phil Reed



Steve Jackson Games / GURPS

AADA Road Atlas V6: The Free Oil States

★★★★★ (1)

\$2.99

PDF - \$2.99

Soft Cover - \$7.95 Out Of Print

1 **ADD TO CRATE**

Contents

68-page PDF

File Size 85.8 MB PDF

Preview Download (10.7 MB)

Publisher Steve Jackson Games

Stock Number SJG30-6306

UPC / ISBN 1556341113

AVAILABLE AS A DIGITAL FILE
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Bayous, Beef, and Black Gold

The Free Oil States is the sixth volume of an ambitious project by your American Autoduel Association. *The AADA Road Atlas and Survival Guide* will tell you everything you need to know about each republic, including the roads, politics, police, duelling arenas, tourist attractions, and truck stops.

Find out the real story behind:

- The Second Civil War and how Texas used its nuclear arms to win the U.S. "Gulf or Bust" campaign.
- The Brotherhood, the embodiment of a code of highway ethics that gives help and information to all truckers.
- Gary Stevenson, the charismatic TV evangelist and former Louisiana "President for Life" who led his republic out of the Bad Years by means of an iron-fisted theocracy.
- and more . . .

The AADA Road Atlas and Survival Guide is more than just an atlas of the Free Oil States. It also features the following valuable material for fans of *GURPS Autoduel* and *Car Wars*:

- A complete rundown of the criminal gangs in the Free Oil States, including "Howlin' Jack" Houma and his Bayou Rats, the Oklahoma People's Front, and the Gulf Pirates.
- Campaign guidelines for *GURPS Autoduel* GMs, with advice for setting an adventure in any part of the Free Oil States.
- Mini-adventures featuring an attack by river pirates, a revolt against the *jefes*, and the incident that might spark the border tension between Texas and Louisiana into a full-scale war.
- "Thirty Seconds Over New Orleans," a complete adventure for *GURPS Autoduel*. The hunt for a missing friend takes you from an Oklahoma oil-town full of religious fanatics, to the Texas highways, to a blimp high over the capital of Louisiana, in a desperate effort to find the mind-control secrets of a renegade reverend . . . before all the Free Oil States fall under his sway.

(This is a digital reprint of a supplement designed for *Car Wars* and *GURPS Third Edition*.)

Written by Stephen Beeman

RECOMMENDED



Mean Streets


AADA Road Atlas V5:
The Midwest

AADA Road Atlas V2:
The West Coast

GURPS Classic:
Autoduel


Mini Car Wars

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AADA Road Atlas V1: The East Coast



\$2.99

AADA Road Atlas V2: The West Coast



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AADA Road Atlas V3: The South



\$2.99

AADA Road Atlas V4: Australia



\$2.99

AADA Road Atlas V5: The Midwest



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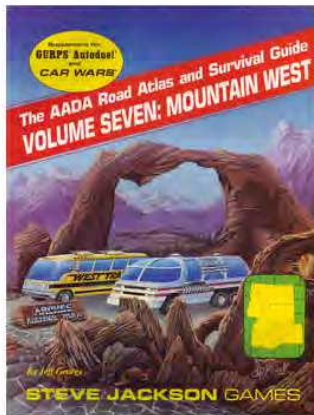
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EXHIBIT 27

Declaration of Phil Reed



Steve Jackson Games / Car Wars

AADA Road Atlas V7: Mountain West

★★★★★ (1)

\$2.99

PDF - \$2.99

Soft Cover - \$7.95 Out Of Print

1

ADD TO CRATE

Contents

67-page PDF

File Size	89 MB PDF
Preview	Download (8.88 MB)
Publisher	Steve Jackson Games
Stock Number	SJG30-6307
UPC / ISBN	1556341350

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Rocky Mountain Highways

The *Mountain West* is the seventh volume of an ambitious project by your American Autoduel Association. The *AADA Road Atlas and Survival Guide* will tell you everything you need to know about each region, including the roads, politics, police, tourist attractions, and even the best restaurants and truck stops.

Find out the real story behind:

- The Japanese *daimyos*' control over Montana.
- Big League Unlimited Duelling (BLUD) -- Bruised but not broken, these brawlers beat the backroads of the Mountain West for vehicular battles.
- Deseret, a dream-come-true homeland for the Church of Jesus Christ of Latter-Day Saints.

The *AADA Road Atlas and Survival Guide* is more than just an atlas of the Mountain West. It also features the following valuable material for fans of *GURPS Autoduel* and *Car Wars*:

- Vacation America. Now that the highways are safer, tourist attractions are becoming popular and profitable again.
- Campaign guidelines for *GURPS Autoduel* GMs, with advice for setting an adventure in any part of the Mountain West.
- Mini-adventures for *Car Wars* or *GURPS*, each set in a different part of the region.
- "BLUD Money," a complete adventure for *GURPS Autoduel*. The duel of a lifetime -- BLUD's World Championship -- is interrupted by Arnie's All Stars, who kidnap BLUD hero Hamilton Burgess and steal the prize money. Is Burgess the victim or the mastermind behind the caper? Who is the Duellist in Gray? And can the PCs pull off their mission despite the BLUD Fiends?

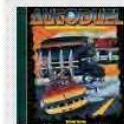
(This is a digital reprint of a supplement designed for *Car Wars* and *GURPS Third Edition*.)

Written by J. David George

RECOMMENDED



AADA Road Atlas V2: The West Coast



GURPS Classic: Autoduel



Car Wars Classic



Mini Car Wars



Car Wars Compendium

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AADA Road Atlas V2: The West Coast



\$2.99

AADA Road Atlas V3: The South



\$2.99

AADA Road Atlas V4: Australia



\$2.99

AADA Road Atlas V5: The Midwest



\$2.99

AADA Road Atlas V6: The Free Oil States



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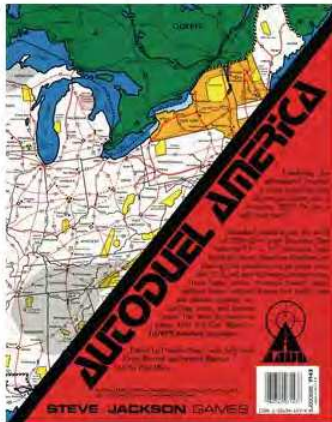
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EXHIBIT 28

Declaration of Phil Reed



Steve Jackson Games / Car Wars

Autoduel America Map

★★★★★ (2)

\$5.99

1 **ADD TO CRATE**

Contents
49-page PDF

File Size 145 MB PDF

Preview Download (9.61 MB)

Publisher Steve Jackson Games

Stock Number SJG30-7143

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Putting Automative Mayhem on the Map!

Looking for adventure? Trouble? A route across the bandit-ravaged countryside of America, 2039? Or just a safe truck stop?

Autoduel America puts the world of 2039 at your fingertips. Two beautiful 23" × 35" full-color maps detail the North American continent, including road conditions for the major interstate, U.S., and state highways; nuclear zones; truck stops; cities; fortress towns; ruins; military bases; national forests and parks; state and national capitals; no-duelling zones and lawless areas. Use them as posters or game aids for *Car Wars* or *GURPS Autoduel* campaigns.

The maps of this supplement were originally printed on oversized paper, so this PDF contains two formats: the original map size, for those with access to oversize printers, and modified versions that span multiple regular sheets.

Written by Carl Manz

RECOMMENDED

Car Wars - Deluxe Edition



AADA Road Atlas V1: The East Coast



AADA Road Atlas V2: The West Coast



The AADA Vehicle Guide



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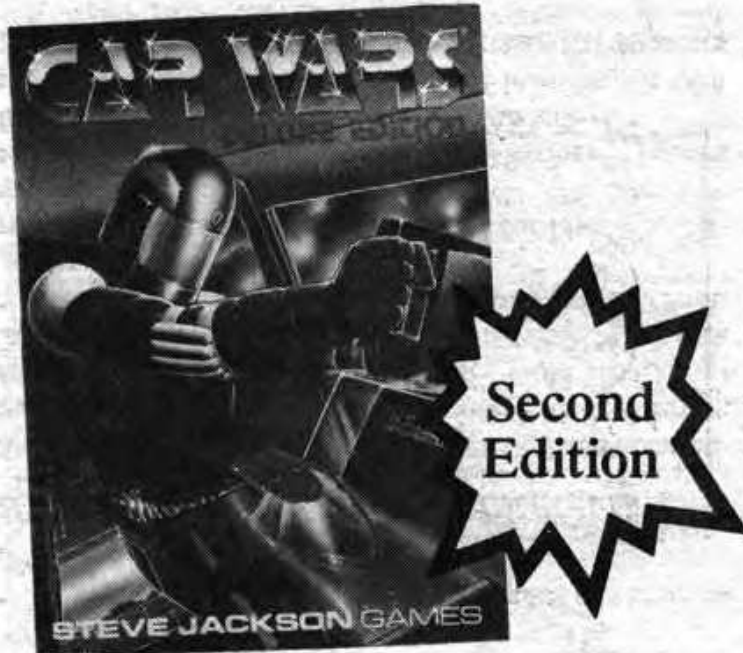
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**WAREHOUSE 23 IS OPERATED BY
STEVE JACKSON GAMES**

EXHIBIT 29

Declaration of Phil Reed

Car Wars is a game of the freeways of the future — where the right of way goes to the biggest guns. Players choose their vehicles — complete with weapons, armor, power plants, suspension, and even body style. Then they take them out on the road — to come home as “aces,” or to crash and burn. A highly realistic grid system controls movement. Scenario rules make this a roleplaying game: If a player character survives, his abilities improve, and he can accumulate money to purchase bigger and better cars. Advanced rules let players design their own vehicles from the ground up.



Car Wars — Deluxe Edition includes everything you need for “autoduelling” both on and off the highways. The 64-page illustrated rulebook gathers all the rules from the many best-selling *Car Wars* products in one handy volume. Cars, cycles, vans, ten-wheeled trucks, trailers, semi rigs, three-wheelers, and helicopters — combat on the freeways, in the arenas, and even off-road duelling — it’s all here, along with special “quick-start” introductory rules for new players.

The *Deluxe Edition* also includes 300 *full-color* counters painted by Denis Loubet and three large (21” x 32”) maps — everything from the original *Car Wars*, *Crash City*, and *Truck Stop* Pocket Boxes — plus *Deluxe Road Sections* of durable cardboard, two “Turning Keys” that make maneuvering a snap, record sheets, and a 4” x 7” ziplock bag for counter storage.

Game design by Chad Irby and Steve Jackson; development by Scott Haring. Any number of players. Complexity 5, on a 1 (low) to 9 (high) scale; solitaire playability 7. Playing time 30 minutes and up.

EXHIBIT B

to Opposer's Motion for Summary Judgment

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEVE JACKSON GAMES
INCORPORATED
Opposer,

v.

INXILE ENTERTAINMENT, INC.
Applicant.

Opposition No. 91225722
Serial No. 86/702,458

DECLARATION OF BRANDON M. RESS

I, Brandon M. Ress, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom, declare that:

1. I am Counsel with the firm King & Spalding LLP and counsel for the Opposer Steve Jackson Games Incorporated (“Opposer”) in the above-referenced matter.

2. A true and correct capture of an October 22, 2015 post on Twitter by the account for the game news site RPG Codex, posted at <https://twitter.com/rpgcodex/status/657275647312707584>, and captured on April 21, 2016, is attached as Exhibit 30. The document was produced by Opposer at Bates Nos. SJG000469.

3. A true and correct capture of an October 22, 2015 post on Twitter by inXile Entertainment CEO, Brian Fargo, posted at <https://twitter.com/BrianFargo/status/657278630800859136?lang=en&lang=en>, and captured on

April 21, 2016, is attached as Exhibit 31. This document was produced by Opposer at Bates Nos. SJG000472-474.

4. A true and correct capture of the article titled “inXile files Autoduel trademark” written by Andy Chalk and published on the PC Gamer website at <http://www.pcgamer.com/inxile-files-autoduel-trademark/> on October 22, 2015, and captured on April 21, 2016, is attached as Exhibit 32. This document was produced by Opposer at Bates Nos. SJG000470-71.

5. A true and correct capture of the article titled “InXile appear to be working on Autoduel reboot” written by Paul Younger and published on the PC Invasion website at <http://www.pcinvasion.com/inxile-appear-to-be-working-on-an-autoduel-reboot> on October 22, 2015, and captured on April 21, 2016, is attached as Exhibit 33. This document was produced by Opposer at Bates Nos. SJG000506-09.

6. A true and correct capture of the article titled “Revving Up: InXile Expand, File Autoduel Trademark” written by Adam Smith and published on the Rock Paper Shotgun website at <https://www.rockpapershotgun.com/2015/10/23/inxile-autoduel/> on October 23, 2015, and captured on April 21, 2016, is attached as Exhibit 34. This document was produced by Opposer at Bates Nos. SJG000475-80.

7. A true and correct capture of the article titled “InXile Files Trademark for Autoduel, Opens New Studio” written by Don Parsons and published on the TechRaptor website at <http://techraptor.net/content/inxile-files-trademark-autoduel-opens-new-studio> on October 23, 2015, and captured on April 21, 2016, is attached as Exhibit 35. This document was produced by Opposer at Bates Nos. SJG000523-25.

8. A true and correct capture of the article titled “inXile Entertainment Files

Trademark for Autoduel” written by Brandon Orselli and published on the Niche Gamer website at <http://nichegamer.com/2015/10/23/inxile-entertainment-files-trademark-for-autoduel/> on October 23, 2015, and captured on April 16, 2016, is attached as Exhibit 36. This document was produced by Opposer at Bates Nos. SJG000382-84.

9. A true and correct capture of the article titled “Classic car combat RPG Autoduel may be making a comeback with inXile” written by “JAFalcon” and published on the Game Watcher website at <http://www.gamewatcher.com/news/2015-23-10-classic-car-combat-rpg-autoduel-may-be-making-a-comeback-withinxile> on October 23, 2015, and captured on April 21, 2016, is attached as Exhibit 37. This document was produced by Opposer at Bates Nos. SJG000526-528.

10. A true and correct capture of the article titled “inXile Trademarks Autoduel, Possible Sequel or Reboot in Development” written by “BuckGB” and published on the Game Banshee website at <http://www.gamebanshee.com/news/116329-inxile-trademarks-autoduel-possible-sequel-or-reboot-in-development.html> on October 23, 2015, and captured on March 9, 2016, is attached as Exhibit 38. This document was produced by Opposer at Bates Nos. SJG000072-74.

11. A true and correct capture of an October 22, 2015, post on Applicant’s website forums at <https://forums.inxile-entertainment.com/viewtopic.php?f=19&t=14358&start=40>, captured April 21, 2106, is attached as Exhibit 39. This document was produced by Opposer at Bates Nos. SJG000481-495.

12. On August 5, 2016, Opposer served on Applicant its First Set of Interrogatories to Applicant, First Set of Requests for Production to Applicant, and First Set of Requests for Admissions to Applicant.

13. A true and correct copy of Applicant's Responses to Opposer's First Set of Interrogatories is attached as Exhibit 40.

14. A true and correct copy of Applicant's Responses to Opposer's First Set of Requests for Production of Documents is attached as Exhibit 41.

15. A true and correct copy of Applicant's Responses to Opposer's First Set of Requests for Admissions is attached as Exhibit 42.

16. A true and correct copy of excerpts from the transcript of the deposition of Frank Brian Fargo, taken on September 13, 2016, is attached as Exhibit 43.

17. A true and correct copy of Attorneys' Eyes Only excerpts from the transcript of the deposition of Frank Brian Fargo, taken on September 13, 2016, is attached as Exhibit 44.

18. A true and correct copy of excerpts from the transcript of the deposition of Michael "Maxx" Kaufman, taken on September 12, 2016, is attached as Exhibit 45.

19. A true and correct copy of Attorneys' Eyes Only excerpts from the transcript of the deposition of Michael "Maxx" Kaufman, taken on September 12, 2016, is attached as Exhibit 46.

20. Opposer is the record owner of U.S. Application Serial No. 86/806,802 for its AUTODUEL mark, filed November 2, 2015 for "[d]igital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games." A true and correct copy of the TSDR database record for U.S. Serial No. 86/806,802 and file wrapper is attached hereto as Exhibit 47.

21. Opposer's Application Serial No. 86/806,802 has been suspended pending the disposition of Applicant's Application Serial No. 86/702,458, which the Examining Attorney cited as a prior pending application that may present a bar to registration. A true and correct

copy of the suspension notice, issued February 26, 2016, is attached hereto as Exhibit 48.

22. In response to Opposer's thirty-nine document requests in this proceeding, Applicant produced a total of 16 documents (52 pages) pertaining to its selection, adoption, planned use, and/or planned advertising of the proposed mark.

23. The earliest of these documents is dated October 22, 2015, almost three months after the filing of its application, and pertains to a media inquiry that resulted from the discovery that Applicant had filed Application Serial No. 86/702,458. A true and correct copy of this document, produced by Applicant at Bates Nos. INX000069-70, is attached as Exhibit 49.

24. A true and correct copy of the TSDR database record for U.S. Serial No. 85940537 and file wrapper is attached hereto as Exhibit 50.

25. A true and correct copy of the case *Grocery Outlet Inc. v. Albertsons, Inc.*, 2008 U.S. Dist. LEXIS 101999 (TTAB Dec. 17, 2008), pulled from LexisNexis, is attached as Exhibit 51.

26. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated and signed in Austin, Texas on the 11th day of November, 2016.

_____/Brandon M. Ress/

BRANDON M. RESS

EXHIBIT 30

Declaration of Brandon M. Ress

Twitter interface showing a tweet from RPG Codex (@RPGCodex) dated 12:21 PM - 22 Oct 2015. The tweet content is "Hell yes." and includes a screenshot of a US Trademark Application for "AUTODUEL".

Mark: AUTODUEL

US Serial Number: 85702458 **Application Filing Date:** Jul. 23, 2015

Filed as TEAS RF: Yes **Currently TEAS RF:** Yes

Register: Principal

Mark Type: Trademark

Status: New application will be assigned to an examining attorney approximately 3 months after filing date.

Status Date: Jul. 29, 2015

Mark Information

- Double parenthesis () identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks * identify additional (new) wording in the goods/services.

For: Providing online downloadable computer and video game programs; interactive video game programs

International Class(es): 009 - Primary Class **U.S Class(es):** 021, 023, 026, 038, 039

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use:	Currently Use:	Amended Use:
No	No	No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: inXile Entertainment, Inc.

Owner Address: Suite 100
2727 Newport Blvd.
Newport Beach, CALIFORNIA 92663
UNITED STATES

RETWEETS: 7 **LIKES:** 20

12:21 PM - 22 Oct 2015

<https://twitter.com/rpgcodex/status/657275647312707584>

4/21/2016

EXHIBIT 31

Declaration of Brandon M. Ress

**Brian Fargo**

@BrianFargo

Follow

Once again the Codex is the first on the scene...

**RPG Codex** @RPGCodex

Hell yes.

RETWEETS

15

LIKES

25



12:33 PM - 22 Oct 2015

**RPG Codex** @RPGCodex · 22 Oct 2015

@BrianFargo Next you're gonna trademark 2400 A.D., right?

(Yes, I am excited.)



1



2

[Show more](#)**The Roadbeer** @TheRoadbeer · 23 Oct 2015

@BrianFargo Please, let this become a thing. One of my favorite games of all time.

**ipox Sandernista** @ipox77 · 23 Oct 2015

@TheRoadbeer @BrianFargo Autoduel?



1

**Dexee** x @dexeebot · 23 Oct 2015

@ipox77 @TheRoadbeer @BrianFargo Is this Brian the Brian who I think it is Rody?

[View other replies](#)**The Roadbeer** @TheRoadbeer · 23 Oct 2015

@dexeebot @ipox77 No, this one has talent and vision.



1

[View other replies](#)**Dexee** x @dexeebot · 23 Oct 2015

@TheRoadbeer @ipox77 no, I mean BRIAN FARGO, formerly of GameSpy??

**The Roadbeer** @TheRoadbeer · 23 Oct 2015@dexeebot @ipox77 Dont think so.
[en.wikipedia.org/wiki/Brian_Far...](http://en.wikipedia.org/wiki/Brian_Fargo)

2

**ipox Sandernista** @ipox77 · 23 Oct 2015


@TheRoadbeer @dexeebot He's been interviewed by GS. Does that count?

Brian Fargo
@BrianFargoOn the front lines
please send supp
support@inxile.ne

Joined April 20

    2 


 **Jim Redner** @JimRedner · 22 Oct 2015
[@BrianFargo](#) [@RPGCodex](#) Am I going to have to bust out my commodore 64?


   2 




 **Ryan Nims** @ryannims · 22 Oct 2015
[@BrianFargo](#) any relation to [@SJGames](#) Autoduel?

 **Mattai** @mattai · 22 Oct 2015
[@ryannims](#) [@BrianFargo](#) [@SJGames](#) Would think so. Another company tried to release an unrelated game and they had to change the name.

   1 

 **Ryan Nims** @ryannims · 22 Oct 2015
[@mattai](#) with the new edition of Car Wars in progress, now's a great time for a digital version! [@BrianFargo](#) [@SJGames](#)


   1 





 **Ryan** @_Kryl_ · 22 Oct 2015
[@BrianFargo](#) [@RPGCodex](#) they must have a mole embedded in the trademark dept...

   1 

 **BrokenFiction** @BrokenFiction · 22 Oct 2015
[@BrianFargo](#) Wait...what?

 **Kasra K** @Kasra5004 · 23 Oct 2015
[@BrianFargo](#) Is Autoduel going to be a kickstarter as well?

 **Blip & Blop** @Blip_and_Blop · 23 Oct 2015
[@BrianFargo](#) I've spent countless hours on [#Autoduel](#) on my Atari ST. That bring back such fond memories. Count me in!

 **Jason Bottjen** @BottjenJason · 22 Oct 2015
[@BrianFargo](#) [@RPGCodex](#) holy cow, I haven't thought of autoduel in years!! That would be awesome!

 **Mordaedil** @Mordaedil · 22 Oct 2015
[@BrianFargo](#) Is this an alternative to Steam or a game?





 **Endren Miers** @evilmiera · 22 Oct 2015
[@BrianFargo](#) Considering that's my birthyear, I've no way of knowing what that is beyond googling.

 **gopher762** @gopher762 · 22 Oct 2015
[@BrianFargo](#) OMG! Tactical RPG Autoduel please!

 **T. J. Brumfield** @enderandrew · 22 Oct 2015
[@BrianFargo](#) I was more excited about the possibility of Meanwhile or Van Buren but I'm likely to back anything you make.

 **Wildstorm** @wildstorm95 · 22 Oct 2015
[@BrianFargo](#) [@RPGCodex](#) [#Autoduel](#) was awesome! Long live Autoduel!



(not a cop) @quinnquan · 22 Oct 2015
[@BrianFargo](#) [@RPGCodex](#) oh SHIT



LazarusLongNL @CCG2004 · 22 Oct 2015
[@BrianFargo](#) Codex are hardcore mofo's, but i have to laugh at "Interactive game program"
That is just genius.



Kevin Mack @kmack1023 · 22 Oct 2015
[@BrianFargo](#) YES PLEASE!!!!!! AUTODUEL WAS INCREDIBLE!!!!



Snowy @Friegolit · 23 Oct 2015
[@BrianFargo](#) [@RPGCodex](#) Man, I remember playing Autoduel as a wee lad. I have to admit that my main source of income was poker though.



Back to top ↑

<https://twitter.com/BrianFargo/status/657278630800859136?lang=en&lang=en>

4/21/2016

EXHIBIT 32

Declaration of Brandon M. Ress

BATTLEFLEET
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GET IT NOW ON STEAM

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+ AN ADDITIONAL FLEET

inXile files Autoduel trademark

By Andy Chalk October 22, 2015



Autoduel was a racing/RPG based on the Steve Jackson Games pencil-and-paper RPG **Car Wars**, a vaguely Mad Max-ish game about heavily-armed vehicles doing battle in a post-apocalyptic America. The computer version was developed by the long-defunct Origin Systems and released all the way back in 1988. And now, if a trademark filing dug up by the **RPG Codex** is to be believed, it may be on the way back.

The **filing**, which was actually made back in July, is for "providing online downloadable computer and video game programs; Interactive video game programs," with the applicant listed as inXile Entertainment Inc. That doesn't necessarily mean much—trademark filings are easy enough to fake, **as we know**—but inXile founder Brian Fargo gave the find some legitimacy by **retweeting** an image of the filing with the comment, "Once again the Codex is first on the scene."

The Fargo connection to Autoduel isn't as obvious as it is with games like **Wasteland 2** or **The Bard's Tale 4**, but it is there. Origin Systems was founded in 1983 by Richard Garriott (and others, including his brother Robert, but Richard is the one everybody knows) and acquired by Electronic Arts in 1992; Electronic Arts just happens to be the publisher of the original **Wasteland** and the original **Bard's Tale** trilogy.

It's a tenuous link, but given the success inXile has had with **Wasteland 2** and the widespread interest in other old-school resurrections—especially RPGs—it's not

“Once again the Codex is the first on the scene...”
<https://t.co/T1AbifM0T8>

— Brian Fargo (@BrianFargo)
October 22, 2015

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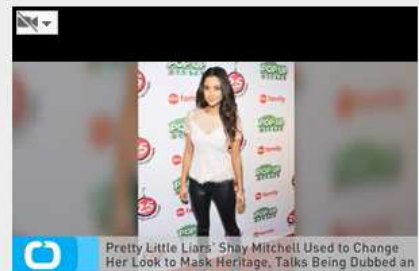
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Pretty Little Liars Shay Mitchell Used To Change Her Look To Mask Heritage



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unreasonable to think that EA would give him a shot at a franchise that hasn't been touched for decades. InXile said it had no comment beyond Fargo's tweet, which isn't surprising but still a bit disappointing. We'll keep you posted. In the meantime, don't miss our recent [chat with Brian Fargo](#) about Wasteland 2, Fallout 4, and the different paths that lead to the end of the world.

TOPICS

[BRIAN FARGO](#)[INXILE ENTERTAINMENT](#)[NEWS](#)

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By Zergnet



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EXHIBIT 33

Declaration of Brandon M. Ress

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8-Bit Armies Interview Quickie



PC Invasion Podcast #44



Ex-World of Warcraft dev Mark Kern explains why Blizzard should open vanilla servers

NEWS

InXile appear to be working on an Autoduel reboot

POSTED BY: PAUL YOUNGER OCTOBER 22, 2015



On the back of a press release earlier today announcing the opening of a new inXile studio in New Orleans, people have been digging around to find out just what this new studio could be working on.

The guys at RPGCodex have done some [snooping through](#) trademark filings and discovered that, back in July, inXile [filed a trademark](#) for *Auoduel*. The [original game](#) was released by Origin back in the 80s ([see this video of the original](#)) and was an RPG based around Steve Jackson Games' tabletop title *Car Wars*.



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SJG000506

The original game was set in a futuristic USA where gangs and vigilantes roamed free, and the only protection people had were cars fitted with weapons. Think of it like *Mad Max*. Players were encouraged to explore the wilderness, undertake missions to earn money, and improve their vehicles by customising them with different weapons and gadgets such as oil slicks, mine layers and more.

This isn't the first time an attempted reboot of *Autoduel* has cropped up in recent years. Back in 2013, indie developer Pixelbionic attempted to launch a [Kickstarter](#) for their own version of *Autoduel* which they later renamed to *MotorGun*. That Kickstarter was eventually cancelled.

There's obviously some history between Pixelbionic and inXile as Pixelbionic's co-founder Michael "Maxx" Kaufman was also a founding member of inXile, and he's now [back there once again](#). Brian Fargo also posted a quote on the *MotorGun* Kickstarter page when that campaign was running, which included the comment:

"Being a huge fan of the *The Road Warrior* I have always loved car combat games and the world needs one with more depth."

Little else is known at this point about any possible inXile version of the game, but Brian Fargo [did post a Tweet](#) which indicates something *Autoduel*-related is afoot at the new studio, and he's obviously keen on the whole car combat/RPG game idea. It looks like the idea for *MotorGun* has now shifted back to inXile, and the rights to use the *Autoduel* name have been secured.

As soon as more concrete information appears we'll let you know, but this could be good news if you were a fan of the original.

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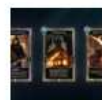


Tim McDonald · 8 months ago

Pretty in-keeping with inXile's work, so I can certainly believe this. They've already created one sequel to an RPG from that era (*Wasteland 2*), and are making a sequel to another (*The Bard's Tale IV*) after having previously rebooted that franchise somewhat unsuccessfully. So yeah, *Autoduel* seems like their sort of IP.



Armies



The Elder Scrolls: Legends beta sign-ups begin today

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SJG000507

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Martin • 6 months ago

I would love it if they bring back Meantime.

^ | v • Reply • Share



sterile • 6 months ago

Very excited to see one of my favourite boardgames getting a PC port by a studio that seem competent. Hope they keep the really detailed car design from the original boardgame... actually, having just remembered how much time I wasted on car designs I never used, I hope they don't :)

^ | v • Reply • Share

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Elly Davis — Looking forward to it. The story looks a little more in depth than the last one.

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dolkensp — Nice response Ainar. Cloverfield:

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Richard N — Resource management sounds great. Good to hear this didn't just end up as Monopoly Dark Souls edition.

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EXHIBIT 34

Declaration of Brandon M. Ress

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Revving Up: InXile Expand, File Autoduel Trademark

By [Adam Smith](#) on October 23rd, 2015 at 2:00 pm.

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Even with **Wasteland 2's enhanced edition** [\[official site\]](#) in the bag, RPG revivalists inXile Entertainment still have a couple of irons in the fire. There's the not insignificant matter of **Torment: Tides of Numenera**, which began as one of the most successful gaming Kickstarters ever, and the recently announced **The Bard's Tale** as well. The company is expanding, with a New Orleans satellite studio **set to open** and create 50 new jobs over the next five years.

A trademark filing **spotted by the RPG Codex** suggests one possible reason for the expansion – another license for another RPG. This time it's Autoduel, the vehicular combat game derived from Steve Jackson Games' Car Wars.

If you were to suggest that Mad Max meets Ultima is something of a dream combination in my mind, you'd be right. I love games about cars having fights – Interstate '76, Quarantine, Carmageddon – and an honest-to-goodness RPG bolted onto a Road Warrior chassis would be splendid to see.

Brian Fargo seemed to confirm that the Codex were onto something when he **quoted their discovery on the Twitters**. The **official Car Wars site** also has a space for an upcoming sixth edition. Scott Haring, once line editor of the Car Wars tabletop games and editor of the magazine accompaniment, **has spoken about plans for that new edition recently**. If that were to release sometime soon, an InXile-created tie-in would be lovely.

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- [GunnerMcCaffrey](#) : "Yup. Surprised to find

SJG000475



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From this site



Trackmania 2's Press Forward Maps Are Amazing



ARK's Survival Of The Fittest Mode Video



The Fallout From The International 2015

22 Comments



Infinitron says:

23/10/2015 at 14:19

Senior inXile employee Maxx Kaufman was involved with this little-remembered Autoduel Kickstarter, increasing the odds that this isn't just a random trademark grab: [link to rockpapershotgun.com](http://link.to/rockpapershotgun.com)



Phasma Felis says:

23/10/2015 at 21:45

Wow. WTF happened there? They just decided to make a game called "Autoduel" that had no relation to Autoduel or Car Wars? At least they changed it to "MotorGun" before launching the Kickstarter, presumably after some strong words from Steve Jackson, but I've got to question the judgment of anyone who thought that was a good idea in the first place.



Phasma Felis says:

23/10/2015 at 21:57

Doing some Googling, it seems that there's a possible question as to whether Steve Jackson Games (accidentally?) let the "Autoduel" trademark lapse in 2005. Given the association with a company that tried to appropriate it once already, I'd really like some confirmation as to whether this is an actual SJG-blessed Autoduel/Car Wars game, or they're just vultures taking advantage.



MattMk1 says:

23/10/2015 at 14:28

Hmm. Heard good things about Autoduel, never played it.

out there's even much debate about this being the best of ... " on [Have You Played... Saints Row: The Third?](#)

- BarneyL : "The voucher expires on 17th May so the sale would need to be pretty soon." on [Humble Devolver Bundle: Not A Hero, Titan Souls & Talos](#)
- rondertaker : ""Fingers crossed that it'll give freedom to play a nice and clean cop?" i dunno ..." on [Police 'Em Up Beat Cop Announced](#)



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SJG000476

Although to be honest, after Wasteland 2 (does the enhanced edition actually fix some of the fundamental flaws of the game, or does it just smooth away the worst of the rough edges and bugs?) I don't know if I trust them.

Definitely wouldn't support a Kickstarter for any new game of theirs.



geisler says:

23/10/2015 at 14:47

In my opinion? No. It even introduced a new god-awful camera that isn't capable of a true isometric viewpoint (the zoom and angle control is limited).



Infinetron says:

23/10/2015 at 15:00

The camera hasn't been changed, other than a limited zoom that was hotfixed within 24 hours.



geisler says:

23/10/2015 at 15:09

Hi jew. I actually played the game after the hotfix and was sure the angle was skewed completely top-down as you started zooming out (i know it's normal when you zoom out completely, but it was happening as soon as you started zooming out).

However, just launched the game again, and you're correct, the camera is back to how it was in the original game now.



Cinek says:

23/10/2015 at 15:34

Very much agreed MattMk1. I'm under the same impressions.

The last game I backed from them is TToN, and I really want TToN to succeed, but I know that if they'd try to kickstart it after the Wasteland 2 – I wouldn't give them a single \$. Now I'm just left waiting for TToN in a slightly troubled mood... hoping it won't flop... but at the same time having a feeling that it will...



MattMk1 says:

23/10/2015 at 16:28

Yeah, playing Wasteland 2 made me *very* uneasy about Numenara as well.

On the other hand, the core stuff they're ostensibly focusing on in Numenara – quests and dialogue rather than combat, and cool locations with interesting art direction – are exactly what Wasteland 2 needed to do better, and it is a different development team working on this. So I try to be optimistic.

I still have misgivings, though... I don't like the PnP Numenara system, and think it's a difficult one to translate into a CRPG.

I've also read comments from the devs about some things they were thinking of putting in – like solving the problem of people resting too much and always approaching each challenge at 100% by putting in hidden timers for quests and events, which are incredibly hard to implement in ways that don't drive completionists like me insane (do I need to explore 100% of this town square the first time I enter it, because maybe one of the three NPCs that said they wanted to talk to me won't be there anymore if I go through an area transition?

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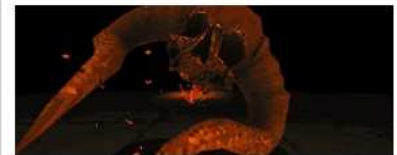
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Rogue's gone rogue



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Stabbing pains



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Premature Evaluation: Bunker Punks

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SJG000477

Do I dare enter that interesting looking building before completing my detailed inventory of the area?) – that made me kind of worried.



Chris Cunningham says:

23/10/2015 at 16:52

Who are you people that had such a bad impression of Wasteland 2 that you're claiming you wouldn't even have paid for it? What exactly were you expecting from it?



MattMk1 says:

23/10/2015 at 17:37

I didn't actually say I wish I hadn't bought it, just that I wouldn't support any new Kickstarters inXile attempts. From now on, I'll wait for the reviews before giving them my money.

But since we're on the subject – what did I hope for from Wasteland 2? Lots of things. A more interesting story. Less filler. An attribute and skill system that wasn't awful. A 2014 game that was inspired by a 25 year old RPG, but not held back by misplaced nostalgia.

I'm not saying it was a terrible game – I probably just barely got my money's worth – but I stopped halfway through it, and it had enough little disappointments I don't see myself ever going back. I'd rather load up Fallout 2 again, or replay Shadowrun: Dragonfall, or buckle down and finish Pillars of Eternity (which also started to drag a bit for me, once I hit the level cap) than try to go back and finish Wasteland 2.

Or play Shadowrun: Hong Kong, like I'm actually doing right now.



PancakeWizard says:

24/10/2015 at 01:05

This confuses me as well. Wasteland 2 (even DC) might have a few niggles, but it's a great game full of world building, tactical character building, hard choices and wit. Clocked 52 hours so far. This is something, to date, I've spent a grand total of \$20 on.



GuybrushThreepwood says:

23/10/2015 at 14:34

The revival of games from the 80s and 90s keeps rolling along. I'm sure that Steve Jackson Games would be thrilled if Fargo and Co can bring Car Wars into the mobile age. Would probably be a good boost to their tabletop sales if it happens.



Tallfeather says:

23/10/2015 at 15:10



Tears In Rain: Everybody's Gone To The Rapture

Rain, faith and rapture



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Pip And Alice's Sims 4 House (Alice Is A Jerk)
Living next door to Alice

supporter

If they make Autoduel, it's a "shut up and take my money" situation for me.
I played Car Wars PnP to death, and played Autoduel on the 8-bits nearly to death.



Napalm Sushi says:

23/10/2015 at 15:33

Together. we will make Desert Chrome cool again.



Harlander says:

23/10/2015 at 18:41

supporter

Despite not really liking Wasteland 2 in the end, I'm still pretty interested in what can be done with this.



Hawk52 says:

23/10/2015 at 22:02

Really wish RPS or someone would talk about the fact that Wasteland 2 DC, ten days after release, has game crippling bugs with no announced ETA on the release date for a potential patch. In fact it may be being actively delayed by console development.

Given the hype around WL2 DC it's been a disaster.



PancakeWizard says:

24/10/2015 at 01:05

"has game crippling bugs"

Define.



Josh W says:

24/10/2015 at 01:20

Why define it, when you can just import it? The only issue is likely to be slightly unexpected functionality.



Hawk52 says:

24/10/2015 at 01:44

Try dismissing a companion for instance. They disappear from the game world to never be seen again. So if you make one mistake in the composition of your party, well, you done fucked.

People are having constant freezing, crashing, and performance issues far worse then with the original game.

There's even a massive memory leak if you use dynamic shadows.

All you have to do is look at the Steam forums and see pages and pages of people becoming incredibly frustrated at the bugs and the lack of any progress to fixing the game.



bwion says:

24/10/2015 at 12:04

Apparently the missing companions do come back in the second half of the game.



wodin says:

30/10/2015 at 04:10

A proper Car Wars PC conversion would be awesome.



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
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A strong second act

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4/21/2016

EXHIBIT 35

Declaration of Brandon M. Ress



InXile Files Trademark for Autoduel, Opens New Studio

Posted by: [Doni Parsons](#) October 23, 2015 in [Gaming](#), [News](#)



InXile Entertainment, [has filed a trademark](#) for what may be one of their next projects, *Autoduel*. If it is what they are working on, *Autoduel* would continue the recent trend from InXile of resurrecting brands from the 1980s and bringing them into the modern day, as the original *Autoduel* was published in 1985 by Origin as a vehicular combat RPG. Based on the Steve Jackson Games series *Car Wars*, *Autoduel* was generally well-received and particularly noted for a punishing difficulty.

If it does come back, it wouldn't be the first time that *Autoduel* has attempted to return in the modern era. In 2013, co-founder and art director of InXile, Maxx Kaufman, as part of [PixelBionic](#) launched a [kickstarter for MotorGun](#) a game that had been titled prior to the kickstarter as ... *Autoduel*. That project was somewhat different being that it was an online vehicular combat game that was mixing inspiration from *Interstate '76*, *World of Tanks*, and of course, *Autoduel*. While the campaign failed, reaching less than 10% before being cancelled, it may be that the idea, as well as the numerous requests for a single player mode (which in fact got them to add one to the project) stuck with Maxx and Brian to return to.

One interesting, if possible irrelevant note, is that on the *MotorGun* stretch goals Chris Avellone was listed as someone to bring in to work on a comic for it and join the team. Avellone, one of the founders of Obsidian who is now freelance, has also worked with InXile on other projects in the past, and may be interested if they are doing an *Autoduel* resurrection given his willingness to work on *MotorGun*. Other notable names who were involved in the *MotorGun* kickstarter were David Jaffe and Zack Norman, who were two of the members of the advisory board and known for their work in some large projects—Jaffe on *Twisted Metal* and *God of War*, while Norman's previous work includes *Interstate '76* and *Mechwarrior 2*.

The mark was originally filed back in July, and was noticed by RPGCodex member Jedi Master Redek [who posted it last night](#). It is an intent to use one for a video game, so there's no concern here of it being a weird pachinko machine or anything like that. Jedi Master Redek was also the person who broke the story about InXile [trademarking Van Buren](#) back in 2014. For those who don't know, *Van Buren* was the title of the cancelled *Fallout 3* by Interplay that was being worked on by Black Isle and many of its elements made it into Obsidian's *Fallout New Vegas*, as there are numerous former Black Isle team members working there.

A trademark filed, though, does not mean there is necessarily a project in the offing. It may be just something they are considering, testing, or working on. InXile has filed several other trademarks like *Van Buren* and *Meantime* [last year](#), neither of which have gone anywhere. Additionally, they hold trademarks for titles like *Desert Ranger*, which is likely a case of brand protection given the tie that name has to the *Wasteland* franchise. Also, if you are worried about it being a faked filing, you can rest somewhat reassured with Brian Fargo's tweet on the event:



Brian Fargo
@BrianFargo

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2:33 PM - 22 Oct 2015

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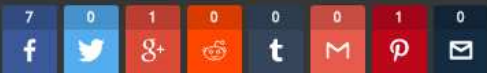


Bullet Points - Dark Souls' Firelink Shrine
April 21, 2016



Sometimes Always Monsters is

In possibly related news, InXile announced only a day or two ago that they have a new studio opening in New Orleans, which is expected to employ 50 people over the next 5 years according to a [press release](#) by Governor of Louisiana's web page. A local paper, the [NOLA](#), covered the event some and reported that Matt Findley will be leading the team of 50 that will be formed around new hires and 12 of the California Office that are moving out to New Orleans to form the nucleus of the new studio. While the team is expected to work on *Bard's Tale 4*, the NOLA article mentions new projects, which might infer that they would be working on a project like a new *Autoduel* before it would seek crowdfunding.



[Home](#) » [Autoduel](#) » InXile Files Trademark for Autoduel, Opens New Studio

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About Don Parsons



I've been a gamer for years of various types starting with the Sega Genesis and Shining Force when I was young. If I'm not playing video games, I'm often roleplaying, reading, writing, or pondering things brought up by speculative fiction.



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EXHIBIT 36

Declaration of Brandon M. Ress



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inXile Entertainment Files Trademark for Autoduel

BY: BRANDON ORSELLI ON OCTOBER 23, 2015, 10:09 AM EDT @BRANDONORSELLI



Following the opening of their New Orleans studio, we've learned that inXile Entertainment has filed a trademark for *Autoduel*.

Autoduel was released back in 1985 by developer Origin Systems, and it was known for being a vehicular combat game, with RPG elements. It was received well by critics, although it never got a sequel and is currently unavailable to purchase commercially (although the copyright is still intact).

The new mark could be for a project this new satellite studio is set to task for, although it remains to be seen if this is indicative of anything the company is working on.

Making a new RPG that harkens back to a classic is sort of inXile's thing now, so it would make sense to see the developer go after revitalizing an older IP for new generations.

FIND MORE STORIES ABOUT: AUTODUEL, INXILE ENTERTAINMENT | NEWS ON NICHE GAMER



About Brandon Orselli

Founder & Editor-in-Chief at Niche Gamer. Italian, but I love Asian culture. I also write about music, comedy, noodles and beer.

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




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**Grampy_Bone** · 6 months ago

Autoduel has aged terribly, a modern remake would be pretty cool

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Gorkamorka RPG when

  · Reply · Share ›**Sebastian Mikulec** · 6 months ago

I never played Autoduel, so I have no idea if it's something worth reviving, but when I hear the phrase "a vehicular combat game, with RPG elements" Steve Jackson's Car Wars immediately pops into my mind, as it's a game I very much enjoyed as a wee lad. If whatever becomes of this, assuming something becomes of this at all, is anything like Car Wars, then I'm in.

As an aside, on the subject of vehicular combat games, whose kidney do I have to sell to get a non-dumbed down remake/reboot/reimagining/rewhatever of Interstate '76?

  · Reply · Share ›**Grampy_Bone** → Sebastian Mikulec · 6 months ago

Autoduel was in fact based on Car Wars

1   · Reply · Share ›**anonme** · 6 months ago

We probably have a while before we see a game made out of these. They filed a trademark for "Meantime" a while back too, as "Van Beuren".

<http://www.ign.com/articles/20...>

These may just be adding to the stable for future plans. Still, yes a InXile made Violent car combat RPG could very well be awesome.

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ALSO ON NICHE GAMER

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Guin — I can assure you that it'll be less cute idols doing idol things and more drama and bitching because ...

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Madbrainbox — This looks really cool. What Tim Schaefer used to make when his games were good.

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KissDisqus — It's obviously a red choker but gosh now I can't unsee it now.

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EXHIBIT 37

Declaration of Brandon M. Ress

BATTLEZONE 98 REDUX

NEWS STORY

Classic car combat RPG Autoduel may be making a comeback with inXile

23 October 2015 | 1 comment | By JAFalcon



It seems that Brian Fargo and inXile may be exhuming another classic roleplaying game for development. The indie studio has already produced Wasteland 2 and is currently working on Torment: Tides of Numenera (a spiritual successor to Planescape: Torment) and The Bard's Tale. Now, it seems they have their sights set on Autoduel.

RPG Codex spotted a trademark filing by inXile for Autoduel, and it's unlikely it's the aborted David Jaffe indie game that itself was a spiritual successor to Twisted Metal.

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Mark: AUTODUEL

US Serial Number: 96702458 Application Filing Date: Jul. 23, 2015

Filed on TEAS RI: Yes Currently TEAS RI: Yes

Register: Principal

Mark Type: Trademark

Status: New application will be assigned to an examining attorney approximately 3 months after filing date.

Status Date: Jul. 29, 2015

Mark Information

Mark Literal Elements: AUTODUEL

Standard Character Claims: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

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International Class(es): 909 - Primary Class U.S. Class(es): 021, 023, 025, 036, 038

Class Status: ACTIVE

Basic: 1(0)

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Filed Use:	Currently Use:	Amended Use:
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
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Owner Address: Suite 100
2727 Newport Blvd
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Hell yes.

2:21 PM - 22 Oct 2015

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Autoduel was a top-down, open world RPG that allowed players to customize their own weaponized cars and either use them in arena combat, deliver packages, or just hunt down scum on the highways and take their stuff. It was developed by Richard Garriott's Origin Systems studio way back in the late 80's for Commodore 64 and Apple II.

The motto? **"Where the right of way goes to the biggest guns."** Drive offensively, folks.

Related Games: Autoduel, Autoduel (1985)

Source: RPS

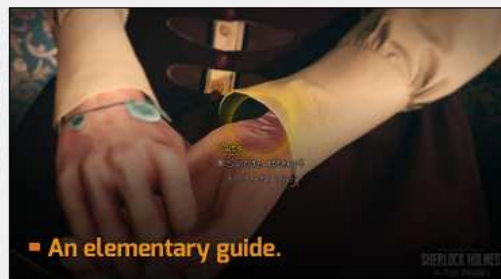


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EXHIBIT 38

Declaration of Brandon M. Ress

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Viperswhip — I enjoyed Fable until I got to about 3/4 through, realized that I think I'd killed someone I needed to talk to advance the plot, and had no save game from ...

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Viperswhip — I am pretty sure I came to DDO via Radiance or came to Pool of Radiance via the Pla Handbook, very close together there. Not being tl

Baldur's Gate: Siege of Dragonspear Gameplay Footage

5 comments • 3 days ago

Q — Yeah, that would be better, imo. When I first came in this thread, the videos in here autplayed in two sudden loud audio sources, and on top of that, one of the two ...

Elven Legacy Collection Released on GOG

2 comments • 6 days ago

Viperswhip — Yes, but a bit like Civ in that each u occupies a tile, don't know about the table top ge lurve the series, if you can get it at a decent price

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EXHIBIT 39

Declaration of Brandon M. Ress



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inXile has trademarked Autoduel

Moderator: [SageDC](#)

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49 posts

inXile has trademarked Autoduel

by [Infinitron](#) » October 22nd, 2015, 3:38 pm

<http://tsdr.uspto.gov/#caseNumber=86702...atusSearch>

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Mark: AUTODUEL

AUTODUEL

US Serial Number: 86702458

Application Filing Date: Jul. 23, 2015

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

Status: New application will be assigned to an examining attorney approximately 3 months after filing date.

Status Date: Jul. 29, 2015

Mark Information

Mark Literal Elements: AUTODUEL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

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For: Providing online downloadable computer and video game programs; Interactive video game programs

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: Yes

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: inXile Entertainment, Inc.

Owner Address: Suite 100
2727 Newport Blvd.
Newport Beach, CALIFORNIA 92663
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where: DELAWARE

<http://www.rpgcodex.net/article.php?id=10116>

Re: inXile has trademarked Autoduel

by [SagaDC](#) » October 22nd, 2015, 4:45 pm

Wow. I was just wishing for this sort of thing a few months ago, during the conversation about the Mad Max video game. Apparently I'm some sort of wizard.

Re: inXile has trademarked Autoduel

Infinitron
Adventurer

Posts: 522

Joined: March 14th, 2012, 7:40 pm



SagaDC
Grandmaster

Posts: 3075

Joined: May 2nd, 2012, 5:51 am

SJG000481

Re: inXile has trademarked Autoduel

by **Crosmando** » October 22nd, 2015, 11:28 pm

Ehhh yuck, real-time action-based game...

Matthias did nothing wrong!



Crosmando
Grandmaster

Posts: 4748
Joined: January 3rd, 2013, 8:48 am



Re: inXile has trademarked Autoduel

by **Lord of Riva** » October 23rd, 2015, 7:20 am

autoduel?

what is it? soemthing known?

EDIT: i just watched ingame footage of the game, im still not confident that i know what this is about



Lord of Riva
Explorer

Posts: 439
Joined: October 14th, 2014, 10:18 am



Re: inXile has trademarked Autoduel

by **SagaDC** » October 23rd, 2015, 7:55 am

“ Crosmando wrote:

Ehhh yuck, real-time action-based game...

Could be. Might not be. We have zero details at the moment, other than the name. The original Autoduel was a tabletop RPG and (incredibly complex) turn-based strategy game, so they might be planning to use the license to make a turn-based RPG set in the Autoduel universe.

“ Lord of Riva wrote:

autoduel?

what is it? soemthing known?

EDIT: i just watched ingame footage of the game, im still not confident that i know what this is about

Back in the 1980s, Steve Jackson Games released a tabletop war game called "Car Wars" where you controlled one or more heavily armed vehicles and took on opponents in turn-based automotive combat. They later released a role-playing game based on this setting called "Autoduel", which expanded on the world of Car Wars, explaining it as a "near-future" setting where automotive deathsports were commonplace to help distract the populace from horrific problems with the world economy and impending war (similar to the original "Deathrace 2000" movie). Weapon laws had become so lax that even civilians could buy vehicle-mounted guns, as long as they had the right licenses.

They ended up releasing over thirty books and supplements for the tabletop game, but only ever got the one video game. There have been a few other folks who have made games *inspired* by the Car Wars or Autoduel franchise, but they're usually obscure and independent titles (such as "Darkwind: War on Wheels").

Re: inXile has trademarked Autoduel

by **Crosmando** » October 23rd, 2015, 8:06 am

So, Twisted Metal?

Matthias did nothing wrong!



Crosmando
Grandmaster

Posts: 4748
Joined: January 3rd, 2013, 8:48 am



Re: inXile has trademarked Autoduel

by Lord of Riva » October 23rd, 2015, 9:09 am

thanks for the explanation, its appreciated



Lord of Riva
Explorer

Posts: 439
Joined: October 14th, 2014, 10:18 am



Re: inXile has trademarked Autoduel

by Priest4hire » October 23rd, 2015, 9:39 am

“ SagaDC wrote:

Back in the 1980s, Steve Jackson Games released a tabletop war game called "Car Wars" where you controlled one or more heavily armed vehicles and took on opponents in turn-based automotive combat. They later released a role-playing game based on this setting called "Autoduel", which expanded on the world of Car Wars, explaining it as a "near-future" setting where automotive deathsports were commonplace to help distract the populace from horrific problems with the world economy and impending war (similar to the original "Deathrace 2000" movie). Weapon laws had become so lax that even civilians could buy vehicle-mounted guns, as long as they had the right licenses.

They ended up releasing over thirty books and supplements for the tabletop game, but only ever got the one video game. There have been a few other folks who have made games inspired by the Car Wars or Autoduel franchise, but they're usually obscure and independent titles (such as "Darkwind: War on Wheels").



Priest4hire
Explorer

Posts: 478
Joined: May 9th, 2012, 12:38 pm



What's the timeline on this? Thing is, I know Origin's *Autoduel* came out in 1985, and it was based on *Car Wars* (launched in 1980.) But when did the tabletop *Autoduel* come out. Best I could find was the *GURPS* version which is much, much newer than the Origin game. As in about 15 years.

As a side note, type "Autoduel" into Google and see how many hits aren't for the 1985 Origin game.

Re: inXile has trademarked Autoduel

by SagaDC » October 23rd, 2015, 10:47 am

“ Priest4hire wrote:

What's the timeline on this? Thing is, I know Origin's *Autoduel* came out in 1985, and it was based on *Car Wars* (launched in 1980.) But when did the tabletop *Autoduel* come out. Best I could find was the *GURPS* version which is much, much newer than the Origin game. As in about 15 years.

SagaDC
Grandmaster

Posts: 3075
Joined: May 2nd, 2012, 5:51 am

Car Wars was first published in 1980, as a post-apocalyptic tabletop skirmish game. It's one of the very few games I've seen where they really focused on turn-based vehicular combat, and I fondly remember participating at some of the tournaments they'd run at a library near where I grew up. It was largely inspired by movies like *Death Race 2000*, *Mad Max*, and *Road Warrior*, which were still fresh and new at the time.

The *Autoduel* video game was based on the *Car Wars* license, and (as you noted) came out in 1985. The *GURPS* version was released just under a year later in 1986, and focused on the role-playing aspects of the setting. They released several sourcebooks for the role-playing game over the next few years after that, mostly in the form of AADA (American Auto Dueling Association) Road Guides and a quarterly magazine (*Autoduel Quarterly*).

It faded out once the 90s rolled around, I think in large part because a lot of folks had a hard time wrapping their brain around the concept of a "high-octane death race" scenario that played out in an agonizingly slow turn-based format. It still had a cult following, and Steve Jackson Games still tries to occasionally cash in on the license (in the form of "lite" strategy games or card games), but I don't think any of that has actually been very successful.

The closest thing to a video game adaptation of the original tabletop game is *Darkwind: War on Wheels*, which is an entirely independently produced turn-based strategy game. It's neat, but has a *lot* of problems (largely because it was entirely done by one developer, who has since given up on it).

EDIT - It's also worth noting that while a lot of the *Car Wars* setting was very tongue-in-cheek, they actually did predict that Arnold Schwarzenegger would enter politics. The general gist of the setting was that Americans would only vote for people they recognized, so eventually celebrities would dominate politics. I'm not so sure we'll ever see Macaulay Culkin as president, though.



Re: inXile has trademarked Autoduel

by IHaveHugeNick » October 23rd, 2015, 11:11 am

Looks interesting, hopefully it turns up on Kickstarter eventually.

IHaveHugeNick
Adventurer

Posts: 986
Joined: September 23rd, 2014, 7:31 am

Re: inXile has trademarked Autoduel

by **Drool** » October 23rd, 2015, 12:05 pm

Well, they also grabbed Meantime and Van Buren.

Although, I can't help but wonder if this is tied to the Louisiana office opening up. I know most people here don't like them, but Autoduel does sort of lend itself towards an MMO type game. Having a secondary office to focus entirely on something like that makes a certain amount of sense and could, potentially, be a nice little earner for them.

Kind of like in Hollywood, where you do the big blockbuster schlock-fest so the studio will fund your indie navel-gazing biopic in black-and-white.

Alwa nasci korliri das.

I neither work, nor speak, for inXile.

Not too late; make it eight!



Drool
Forum Moderator

Posts: 7904
Joined: March 17th, 2012, 9:58 pm
Location: Under Tenebrosia, doing shots with Scedu.



Re: inXile has trademarked Autoduel

by **Lucius** » October 23rd, 2015, 1:54 pm

This has got my attention, if it has anything to do with the video game.

What's this about a Louisiana office though?



Lucius
Master

Posts: 2190
Joined: March 9th, 2012, 6:43 pm



Re: inXile has trademarked Autoduel

by **Drool** » October 23rd, 2015, 2:05 pm

viewtopic.php?f=23&t=14336

Alwa nasci korliri das.

I neither work, nor speak, for inXile.

Not too late; make it eight!



Drool
Forum Moderator

Posts: 7904
Joined: March 17th, 2012, 9:58 pm
Location: Under Tenebrosia, doing shots with Scedu.



Re: inXile has trademarked Autoduel

by **Crosmando** » October 24th, 2015, 12:56 am

So apparently there actually was an Autoduel CRPG in the 80's made by Origin:

<https://www.youtube.com/watch?v=r8JyqNJB8zI>

Also a Roadwar 2000 CRPG made by SSI:

<https://www.youtube.com/watch?v=RXRs3jWgfo>

If they use these games as the basis for the new game I would definitely be interested.

Matthias did nothing wrong!



Crosmando
Grandmaster

Posts: 4748
Joined: January 3rd, 2013, 8:48 am



Re: inXile has trademarked Autoduel

by **Ronin73** » October 24th, 2015, 10:32 pm

Autoduel was a pretty fun game back in the day.

Cars Wars actually had a Kickstarter earlier this year:



Ronin73
Master

https://www.kickstarter.com/projects/84...nav_search

With the recent Battletech Kickstarter I was wondering what if this was Car Wars instead of Mechs? A single player, turn based open world campaign where you ran a gang with cars, bikes, trucks, helicopters etc would be awesome.

The biggest failure in the recent past is this assumption that the audience is not smart. Too much effort is being spent making it dummy proof..all the clues are being held right in front of their nose. The exploration and journey is the reward

Brian Fargo

Posts: 1346
Joined: April 3rd, 2012, 5:35 pm



Re: inXile has trademarked Autoduel

by **Acid** » October 25th, 2015, 6:54 am

I thought they had brought the rights to Crusader for a second, when I saw the auto duel cover pic.

Never played auto duel, should be interesting.

“



Acid
Scholar

Posts: 141
Joined: June 6th, 2012, 6:39 am



Re: inXile has trademarked Autoduel

by **Crosmando** » October 26th, 2015, 5:13 am

A Car RPG is way too limited in scope for my liking. For example would such a game allow you to get out of the car (other than at designated safe areas like towns)? Driving around the wasteland engaging in battles with raiders etc in their cars sounds novel, except when you consider that there would be no indoor levels, there would be no getting out of that car and engaging in battles with multiple enemies and engaging in "RPG stuff" like exploring levels and using skills like lockpick.

I mean I'm making a lot of assumption, there could be a "Car RPG" where you can get out of the car (with your party) and engage in all those RPG thing, but then why would you call it a "Car RPG"? Wouldn't it just be a regular RPG where you happen to get a car, like eh... Fallout 2?

Why not just make Wasteland 3 and add a "Driving" skill along with using Mechanics to keep your car in working condition?

Sounds to me like Fargo watched Fury Road and got overexcited

Matthias did nothing wrong!

“



Crosmando
Grandmaster

Posts: 4748
Joined: January 3rd, 2013, 8:48 am



Re: inXile has trademarked Autoduel

by **Gruftlord** » October 26th, 2015, 6:36 am

It sounds like a nice little mobile game they could make at their new studio 😊

“



Gruftlord
Explorer

Posts: 440
Joined: September 23rd, 2014, 2:43 am

Re: inXile has trademarked Autoduel

by **Zombra** » October 26th, 2015, 9:33 am

“ Crosmando wrote:

A Car RPG is way too limited in scope for my liking.

There are plenty of fun games where you never get out of your vehicle and walk around. Adding RPG style advancement mechanics to something like this will not make it worse. You also don't have to make a normal RPG where you spend 95% of the time not in the car to call it a "Car RPG". If you wouldn't like a game in which most of your time is spent driving, fine; but that doesn't make such a design somehow impossible or problematic. I don't think you ever walked around in the Origin game (or if you did, it was strictly to get from shop to shop in town) and it was still fabulous. The short-lived Auto Assault also worked like this and it was a great concept too.

[My Band's Version of the C64 Version of the Bard's Tale III Version of "Sir Robin's Tune"](#)



"I don't care about the mass market." - Brian Fargo

“



Zombra
Global Moderator

Posts: 4993
Joined: March 8th, 2012, 10:50 pm



Re: inXile has trademarked Autoduel

by **IHaveHugeNick** » October 26th, 2015, 9:54 am

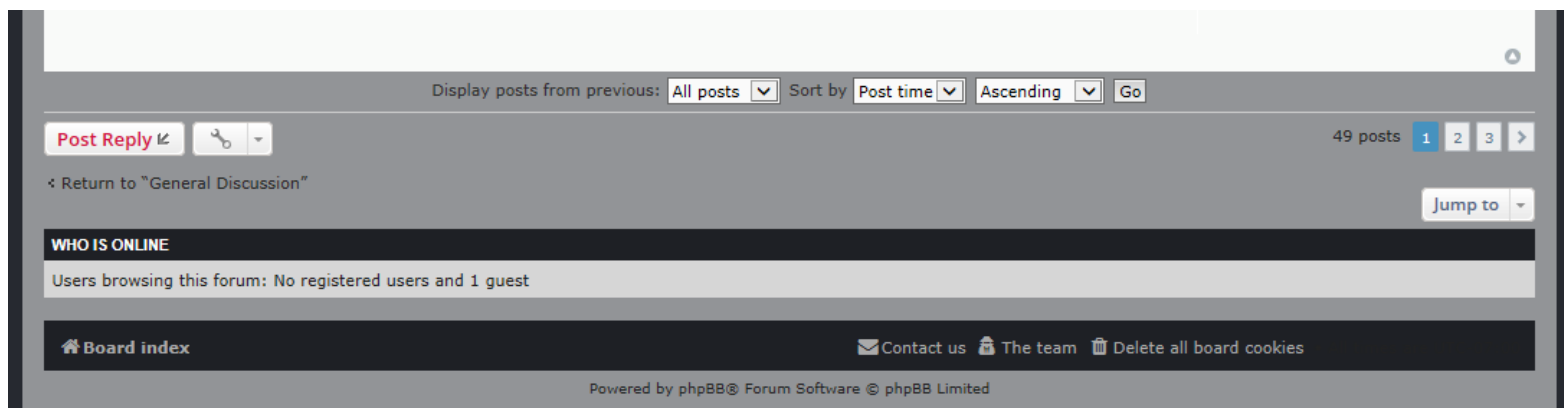
Its almost like there haven't been countless space RPGs where you never get out of your spaceship.

“

IHaveHugeNick
Adventurer

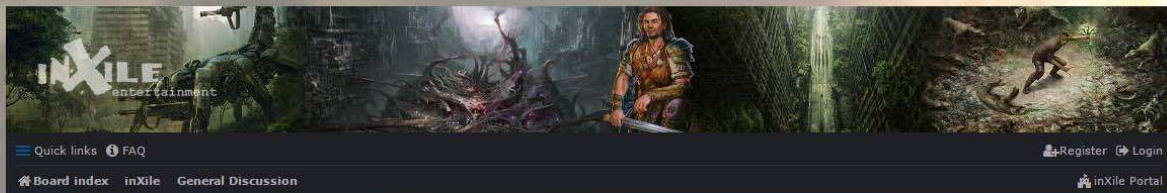
Posts: 986
Joined: September 23rd, 2014, 7:31 am

SJG000485



<https://forums.inxile-entertainment.com/viewtopic.php?t=14358>

4/21/2016



inXile has trademarked Autoduel

Moderator: [BagADC](#)

Post Reply

49 posts < 1 2 3 >

Re: inXile has trademarked Autoduel

D by [Drool](#) » October 26th, 2015, 12:18 pm

“ iHaveHugeNick wrote:

Its almost like there haven't been countless space RPGs where you never get out of your spaceship.

Or numerous successful Mech\Warrior\Battletech games...

Aliva nasci korliri das.

I neither work, nor speak, for inXile.

Not too late; make it eight!



Drool
Forum Moderator

Posts: 7904

Joined: March 17th, 2012, 9:58 pm

Location: Under Tenebrosia, doing shots with Scaedu.



Re: inXile has trademarked Autoduel

D by [Crosmando](#) » October 27th, 2015, 12:06 am

No party with multiple characters with their own attributes/skills/etc, no [indoor] map explorations? Doesn't even sound like a real RPG to me, just a tactics/strategy game with "upgrades".

Why not instead create an CRPG with vehicles but where your char/s walk around and fight on foot also? CRPGs excel when they have many features, not when they are pointlessly limited. Make an RPG with tactical combat, stealth, traps, vehicles, aircraft, lots of skills, as much as you can. The alternative just sounds like lazy developers to me.

Matthias did nothing wrong!



Crosmando
Grandmaster

Posts: 4748

Joined: January 3rd, 2013, 8:48 am



Re: inXile has trademarked Autoduel

D by [Zombra](#) » October 27th, 2015, 3:05 am

“ Crosmando wrote:

No party with multiple characters with their own attributes/skills/etc, no [indoor] map explorations? Doesn't even sound like a real RPG to me, just a tactics/strategy game with "upgrades".

Why not instead create an CRPG with vehicles but where your char/s walk around and fight on foot also? CRPGs excel when they have many features, not when they are pointlessly limited. Make an RPG with tactical combat, stealth, traps, vehicles, aircraft, lots of skills, as much as you can. The alternative just sounds like lazy developers to me.

Wouldn't that mean that RPGs that don't let you drive around are also "lazy"? Like those where you are limited to, say, walking? Because I can think of one or two RPGs that did OK where the characters walk.

And that part about how there has to be a ceiling above you for it to be a "real RPG" ... the mind boggles. "Exploring a dungeon on foot: RPG. Exploring a city in a car: not RPG." 🙄

Multiple characters required? Plenty of "real RPGs" have a single character. Not that there's any reason an Autoduel RPG couldn't have a group of PCs also. If I remember right, Car Wars was all about building a team of vehicles (with a plethora of statistics) on a point buy system ... either one big juggernaut or several smaller vehicles, player choice. The convoy is certainly a familiar genre trope.

As for cramming in as many different systems as possible ... is that the exclusive recipe for a good game?

It's OK to not like the idea of an RPG where the character(s) drive a lot, but trying to tear it down with "this can't be an RPG" and "the devs must be bad people if they consider this" isn't working.

[My Band's Version of the G64 Version of the Bard's Tale III Version of "Sir Robin's Tune"](#)



"I don't care about the mass market." - Brian Fargo



Zombra
Global Moderator

Posts: 4993

Joined: March 8th, 2012, 10:50 pm



Re: inXile has trademarked Autoduel

D by [Crosmando](#) » October 27th, 2015, 3:21 am

“ Zombra wrote:

Wouldn't that mean that RPGs that don't let you drive around are also "lazy"? Like those where you are limited to, say, walking? Because I can think of one or two RPGs that did OK where the characters walk.

Not necessarily, but it's often an excuse devs use. "Our game is focused" can often be a codeword for "it's too much work".

“

And that part about how there has to be a ceiling above you for it to be a "real RPG" ... the mind boggles. "Exploring a dungeon on foot: RPG. Exploring a city in a car: not RPG." 🙄

That's kinda my point.... there would be no *dungeons* in such an "RPG", at least not in a traditional sense. No searching caves, houses, sewers, fighting, looting etc. What is even the point?



Crosmando
Grandmaster

Posts: 4748

Joined: January 3rd, 2013, 8:48 am



“
Multiple characters required? Plenty of “real RPGs” have a single character.

And are worse for it!

“
Not that there's any reason an Autoduel RPG couldn't have a group of PCs also. If I remember right, Car Wars was all about building a team of vehicles (with a plethora of statistics) on a point buy system ... either one big juggernaut or several smaller vehicles, player choice. The convoy is certainly a familiar genre trope.

Sounds like a strategy game to me. Replace “points” with money and cars with tanks... Command & Conquer is now an RPG? (hey even units in C&C “level up”!).

“
As for cramming in as many different systems as possible ... is that the exclusive recipe for a good game?

For a CRPG it sure is. Unless you're one of those indie hipsters who think there's “elegance in simplicity”, which isn't much different from the AAA logic which gives us mainstream RPG's with three classes and limited to no customization.

“
It's OK to not like the idea of an RPG where the character(s) drive a lot, but trying to tear it down with “this can't be an RPG” and “the devs must be bad people if they consider this” isn't working.

For a dev studio who have only made one -real- CRPG, I think it errs dangerously into the direction of “Let's do this because it's wacky” or the indie disease of trying to be unique or different just for the sake of being different or unique (usually to impress the media). Why can't we just have normal/traditional CRPGs?

You know that Elder Scrolls: Arena was originally going to be a game about a gladiator who fought in sn arena against progressively tougher opponents. Bethesda added side-quests outside the arena to spruce up the game, but quicker realized that the side-quests were more fun than the arena itself. Probably a good metaphor for “Autoduel” or it's likes.

Matthias did nothing wrong!

Re: inXile has trademarked Autoduel

By Zombra » October 27th, 2015, 3:40 am

“
Crosmando wrote:
“Our game is focused” can often be a codeword for “It's too much work”.

I find it doubtful that inXile has trademarked Autoduel specifically so they can be lazy and make a shallow game that sucks and get away with it.

“
That's kinda my point.... there would be no dungeons in such an “RPG”, at least not in a traditional sense. No searching caves, houses, sewers, fighting, looting etc. What is even the point?

Wha ... are you serious? Adventures can't happen outside? *Fighting* can't happen outside? People in cars can't try to kill each other? Have you ever seen ... a movie?

“
Sounds like a strategy game to me. Replace “points” with money and cars with tanks... Command & Conquer is now an RPG? (hey even units in C&C “level up”!).

Shrug. Autoduel might indeed be more a thing where the cars have more stats than the characters. Building a car in CV bears a lot of resemblance to building a character in other games. But in Car Wars/AD the drivers and whatnot had individual stats as well, if I remember right, for whatever that's worth.

“
“
Is [cramming in as many different systems as possible] the exclusive recipe for a good game?

For a CRPG it sure is. Unless you're one of those indie hipsters who think there's “elegance in simplicity”, which isn't much different from the AAA logic which gives us mainstream RPG's with three classes and limited to no customization.

So, to use a contemporary example, you think the Sims town building in Fallout 4 is a wonderful and appropriate idea?

“
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Wasteland 2, Torment: Numenera, Bard's Tale 4 ... that's three trad RPGs in a row. Can they not go *slightly* off the track with an upcoming project? How many straight RPGs do they need to make before they can do something a little different?

“
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I have no problem with any game being made more fun than its original vision. But beware the dread Feature Creep.



Zombra
Global Moderator

Posts: 4993
Joined: March 8th, 2012, 10:50 pm





My Band's Version of the C64 Version of the Bard's Tale III Version of "Sir Robin's Tune"



"I don't care about the mass market." - Brian Fargo

Re: inXile has trademarked Autoduel

D by **Crosmando** » October 27th, 2015, 4:34 am

“ Zombra wrote:

I find it doubtful that inXile has trademarked Autoduel specifically so they can be lazy and make a shallow game that sucks and get away with it.

Actually, I wouldn't be surprised it was a "shallow" (simple) game for the New Orleans studio to gain experience with.

“

Wha ... are you serious? Adventures can't happen outside? Fighting can't happen outside? People in cars can't try to kill each other? Have you ever seen ... a movie?

Being stuck in a car all the time pointlessly limits and simplifies potential gameplay options. There's so much more that can be explored.

“

Shrug, Autoduel might indeed be more a thing where the cars have more stats than the characters. Building a car in CW bears a lot of resemblance to building a character in other games. But in Car Wars/AD the drivers and whatnot had individual stats as well, if I remember right, for whatever that's worth.

Even for a guy like myself who loves combat-dominant games, that sounds like the recipe for combat only (not just combat-dominant, nothing but combat). I mean what skills or abilities can you give a *car*? It would just come down to paying XP (money) to upgrade the armor or put a new gun on the roof. I mean "Auto Duel", I'm assuming this means that combat is done in controlled/contained matches like a tournament (correct me if I'm wrong), that in itself is way too limited in scope except for a very small, very low-budget affair.

“

So, to use a contemporary example, you think the Sims town building in Fallout 4 is a wonderful and appropriate idea?

If it's optional, why not. Many RPGs have strongholds or equivalent. I'd love a feature in a CRPG where you "control" a town and extract taxes, and reinvest in the town by selling stuff you find on your adventures, stuff like that.

“

Wasteland 2, Torment: Tides of Numenera, Bard's Tale 4 ... that's three trad RPGs in a row. Can they not go slightly off the track with an upcoming project? How many straight RPGs do they need to make before they can do something a little different?

TTon is not normal, it's a spiritual successor to a game which specifically tried to uproot RPG tropes and traditions.

“

I have no problem with any game being made more fun than its original vision. But beware the dread Feature Creep.

My only point I'd make is; why? Why not build on what already exists, Wasteland 2, a post-apocalyptic CRPG with many features, it's not perfect but it's a PA CRPG which is crying out for new features like stealth and driving stuff. Just seems pointless, why make a simple game when you can make a complex game?

A Wasteland 3 with helicopters and cars (not to mention other stuff like Jumping, Swimming, Sneaking) more be a thousand times better than something built from the ground up focused on one aspect.

Matthias did nothing wrong!

Re: inXile has trademarked Autoduel

D by **Zombra** » October 27th, 2015, 4:56 am

“ Crosmando wrote:

Being stuck in a car all the time pointlessly limits and simplifies potential gameplay options.

Except ... it's not "pointless" if the point is for it to be a game mostly about driving. Again, if you don't like driving, fine. That doesn't mean that every game has to have everything that's in the games you like, and it certainly doesn't mean that a game based on Autoduel needs to have a dungeon where you park the cars outside and then explore 20 levels of sub-basements on foot.

“

A Wasteland 3 with helicopters and cars (not to mention other stuff like Jumping, Swimming, Sneaking) more be a thousand times better than something built from the ground up focused on one aspect.

No one wants to see Wasteland 3 more than I do, and broader gameplay sounds great. But, even as a fan, I am OK with inXile doing projects that are not Wasteland 3. I'm sure they'll be grateful for my permission.

“

TTon is not normal, it's a spiritual successor to a game which specifically tried to uproot RPG tropes and traditions.

Wow, so Planescape: Torment doesn't qualify as a "real RPG"? 🙄 ... Okay.

“ Crosmando wrote:

My only point I'd make is; why?

Because Autoduel is a cool game? and because a good CRPG version of it would be welcomed by the fans?

My Band's Version of the C64 Version of the Bard's Tale III Version of "Sir Robin's Tune"



"I don't care about the mass market." - Brian Fargo

Re: inXile has trademarked Autoduel

D by **Gruftlord** » October 27th, 2015, 7:00 am

1. I. Crosmando: To those who say that you don't complete stories? (re: Planescape: Torment) I think that's a fair point. I've added to Wasteland 2, that



Crosmando
Grandmaster

Posts: 4748

Joined: January 3rd, 2013, 8:48 am



Zombra
Global Moderator

Posts: 4993

Joined: March 8th, 2012, 10:50 pm



Lol, Crosmando. Is there ever anything you don't complain about? I remember you complaining about features being added to Wasteland 2, that according to you didn't belong into the game because they belonged to fallout. Which is funny, considering your recent suggestions of adding car duel to wasteland 😊



Gruftlord
Explorer

Posts: 440
Joined: September 23rd, 2014, 2:43 am

Re: inXile has trademarked Autoduel

By **Crosmando** » October 27th, 2015, 7:05 am

“ Gruftlord wrote:

Lol, Crosmando. Is there ever anything you don't complain about?

I'm complaining? You should check out some of the V/L2/DC subforums lately.

“ Gruftlord wrote:

I remember you complaining about features being added to Wasteland 2, that according to you didn't belong into the game because they belonged to fallout.

I didn't "complain" about aimed shots or whatever, I just said they weren't essential as in life-or-death as some would have it. What I didn't like is that Fallout features like aimed shots got in, but actual features from the original Wasteland like Climb and Swim, and Silent Move, didn't make the cut, it felt like Fargo and his cohorts were actively taking their cues from Fallout and not Wasteland. I welcome their inclusion in V/L2. I'd love if Wasteland had 50 skills.

And yes, it's largely my personal opinion. Same reason why I'm not excited about that Battletech game, it doesn't feel very RPG-like to me.

Matthias did nothing wrong!

Re: inXile has trademarked Autoduel

By **Gruftlord** » October 27th, 2015, 7:27 am

Thanks for the clarification, you're not one to focus on positive aspects in your posts too much. So i hope you understand why i initially got another impression. Indeed, you have been pretty absent from posting in the wl forum the last week.

While i don't agree with your opinion on what constitutes a true rpg, i have to add, that i also feel less drawn to those 'machine' heavy rpgs. While mechanically the same thing, i feel different about a game where i have my character learn new things vs. one where i add new parts to a car or mech. I strongly prefer the former and my level of immersion is generally higher with them.

I, too hope that it's going to be a small game to let the new studio learn it's ropes. Though who knows. InXile has shown that they are willing to revamp those old 80s games into something new. (i.e. V/L and bards tale were kind of similar, at least on the battle screen; with the biggest different, aside from the setting, being the travel screen: 1st person vs overhead. Both grid based though. Now look at the difference between V/L2 and Bards Tale 4. Can't really tell their common heritage any more). So i'm eager to see what they come up with for auto duel.

Last edited by Gruftlord on October 27th, 2015, 8:07 am, edited 1 time in total.



Gruftlord
Explorer

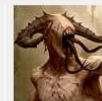
Posts: 440
Joined: September 23rd, 2014, 2:43 am

Re: inXile has trademarked Autoduel

By **Lucius** » October 27th, 2015, 7:42 am

Every game doesn't have to be a party based RPG and every game doesn't need to appeal to every gamer. How much complaining did I do about TTON being a text heavy RPG with combat on the side? None. I didn't back it because I wasn't interested and "shock" never once complained.

With that out of the way, any sequel or successor to Autoduel, vehicle combat should be the primary focus. I'd say 80% of the game should take place inside your car. I loved the original, even if it was an action RPG-lite. It was a fun game, whatever category you want to stick it in.



Lucius
Master

Posts: 2190
Joined: March 9th, 2012, 6:43 pm



Re: inXile has trademarked Autoduel

By **SagaDC** » October 27th, 2015, 8:31 am

Honestly, there are a lot of assumptions being drawn right now, leading to arguments based on almost nothing. At the moment all we know for certain is that InXile snagged the rights to make a game based on Autoduel. There are two previously existing things named Autoduel - one was the video game from Origin, and the other was a tabletop Strategy-RPG from Steve Jackson Games.

It'll involve cars, and will probably be an RPG or Strategy game of some sort, but it's hard to really draw conclusions beyond that at the moment. I'd suggest holding off on the arguments until we actually get some sort of teaser or Kickstarter page to criticize.

SagaDC
Grandmaster

Posts: 3075
Joined: May 2nd, 2012, 5:51 am

Re: inXile has trademarked Autoduel

By **Crosmando** » October 27th, 2015, 8:55 am

“ SagaDC wrote:

Steve Jackson Games.

Holy shit, now that's something to discuss! If this means InXile is planning on doing a deal with SJG then why not do a deal for a tabletop ruleset which is actually a) popular, and b) still being actively played with a large fanbase, like I dunno... GURPS! Which has dozens of different settings.

Autoduel isn't even in print anymore.

Matthias did nothing wrong!



Crosmando
Grandmaster

Posts: 4748
Joined: January 3rd, 2013, 8:48 am



Re: inXile has trademarked Autoduel

By **Gruftlord** » October 27th, 2015, 9:11 am

Probably because they aim at licenses that are less popular for the general public but have a bit of an old school following. It worked three times for a success kickstarter. GURPS would probably mean aiming higher. That involves higher cost of license acquisition. Forcing you to aim at a bigger game release, increasing the size of your team (with the additional drawback of maybe wanting to keep the size later on), aiming at higher sales numbers.

If there's one thing we know about Brian, it's that he doesn't care for the mass market 😊



Gruftlord
Explorer

Posts: 440
Joined: September 23rd, 2014, 2:43 am

Re: inXile has trademarked Autoduel

By **Crosmando** » October 27th, 2015, 9:27 am

A GURPS-based CRPG Kickstarter would be massive, especially if it's a good setting.



Crosmando
Grandmaster

Matthias did nothing wrong!

Re: inXile has trademarked Autoduel

By **Drool** » October 27th, 2015, 12:12 pm

“ Crosmando wrote:

And yes, it's largely my personal opinion. Same reason why I'm not excited about that Battletech game, it doesn't feel very RPG-like to me.

Actually, I'll side with Cros on this part here.

Having played Battletech, I'll admit that it's not much of an RPG. It's really more of a MOBA, like DOTA2 or like Warhammer 40k. It's more about strategy than character development. It's figuring out what 'mechs to field and how to best use their abilities to accomplish your goal. Sure, there's stats involved that you can tweak, but it's really more of a wargame than a role-playing game.

Which is why FASA came out with Mechwarrior, so you could have some RPG elements aside from your giant robot fights. And because it made sense to do something with the pilot outside of the 'mech fights. That's why Crescent Hawk's Inception and Crescent Hawk's Revenge are so wildly different than the Mechwarrior games. Granted, even the Mechwarrior games took you out of the cockpit, but that was really just to make money and repair 'mechs and hire NPCs.

So, anyway, my point is that I'm fine with saying Autoduel likely won't be much of an RPG. Hell, like I said, I thought it would be a fantastic base for an MMO or MOBA. And I'm fine with that. Not everything needs to be an old school RPG.

Alva nasci korliri das.

I neither work, nor speak, for inXile.

Not too late; make it eight!

Re: inXile has trademarked Autoduel

By **Lucius** » October 27th, 2015, 1:15 pm

Yeah but Autoduel was nothing like a MMO or MOBA. I imagine you can take any "world" and use it as a MMO setting, but in this case I don't think that makes much sense. It would make more sense to just use a new IP, since Autoduel name wouldn't be large enough to build a playerbase off of.

Lots of interesting things on the web about Autoduel recently though. Like SJG might still hold the trademark which raises the question of what is inXile doing. Also that whole thing with Motorgun failed kickstarter that was originally titled Autoduel from a company founded by an ex-inXile employee.

From comments sections and forums where I got Autoduel Google hits, seems people are generally excited about what happens with this.

Re: inXile has trademarked Autoduel

By **Drool** » October 27th, 2015, 1:20 pm

Well, yes. It was probably more like the Mechwarrior games. Doesn't mean the property (especially considering what Car Wars was) doesn't lend itself rather well to a MOBA.

Especially since that property is vastly more enjoyable playing against other people than just against the computer.

Alva nasci korliri das.

I neither work, nor speak, for inXile.

Not too late; make it eight!

Re: inXile has trademarked Autoduel

By **Ronin73** » October 27th, 2015, 1:35 pm

“ Crosmando wrote:

Same reason why I'm not excited about that Battletech game, it doesn't feel very RPG-like to me.

Probably because it isn't really being pitched as an RPG. The FAQ section on the Kickstarter says as much:

Is this an RPG like your Shadowrun games?

Our Shadowrun games are cRPGs with tactical combat. BATTLETECH will be a tactical 'Mech combat game. If we're lucky enough to reach the Stage 2 and Stage 3 co-funding levels, we'll be able to add some RPG elements, but the core of this game is tactical combat.

“ Crosmando wrote:

“ SagaDC wrote:
Steve Jackson Games.

Holy shit, now that's something to discuss! If this means InXile is planning on doing a deal with SJG then why not do a deal for a tabletop ruleset which is actually a) popular, and b) still being actively played with a large fanbase, like I dunno... GURPS! Which has dozens of different settings.

Yeah, I'd be on board with inXile acquiring rights to use a ruleset that could be applied to multiple game settings. GURPS would be a fine choice. Rolemaster and D20 also come to mind. I'm sure there are others as well.

IIRC? GURPS was supposed to be used for Fallout until Steve Jackson became unhappy with the amount of violence/language in the game and pulled the plug.

Posts: 4/48
Joined: January 3rd, 2013, 8:48 am



Drool
Forum Moderator

Posts: 7904
Joined: March 17th, 2012, 9:58 pm
Location: Under Tenebrosia, doing shots with Scaadu.



Lucius
Master

Posts: 2190
Joined: March 9th, 2012, 6:43 pm



Drool
Forum Moderator

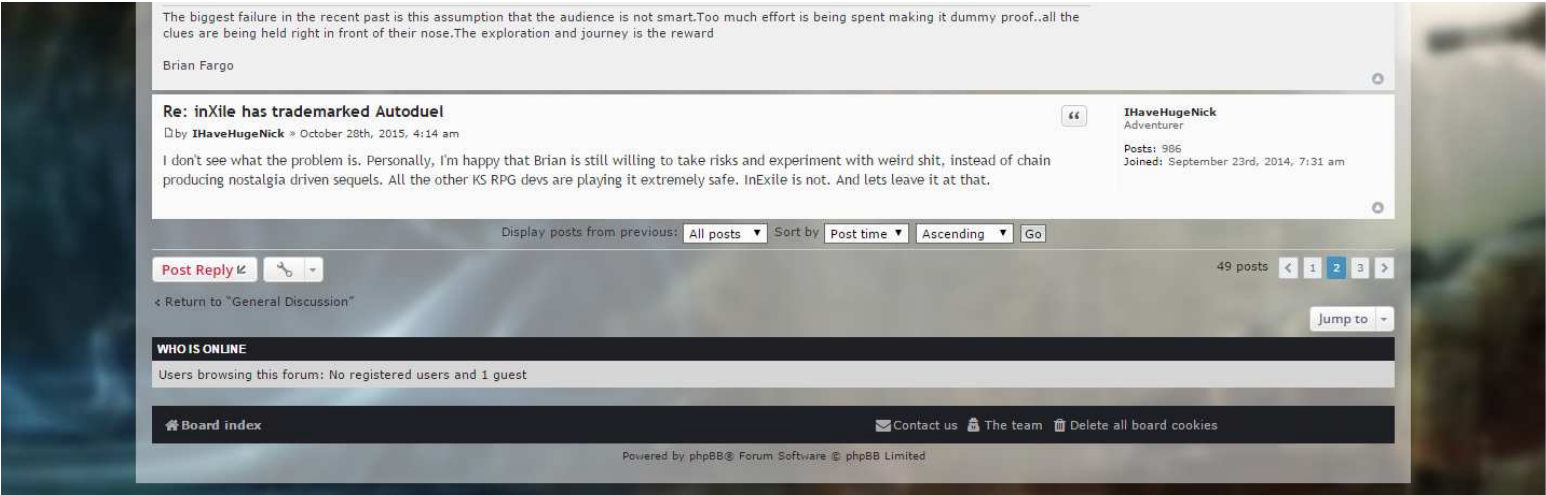
Posts: 7904
Joined: March 17th, 2012, 9:58 pm
Location: Under Tenebrosia, doing shots with Scaadu.



Ronin73
Master

Posts: 1346
Joined: April 3rd, 2012, 5:35 pm





https://forums.inxile-entertainment.com/viewtopic.php?f=19&t=14358&start=20

4/21/2016

inXile has trademarked Autoduel

Moderator: [SagaDC](#)

Post Reply

49 posts

Re: inXile has trademarked Autoduel

by [Roger Wilco](#) » November 7th, 2015, 9:44 pm

“ Crosmando wrote:

“ SagaDC wrote:
Steve Jackson Games.

Holy shit, now that's something to discuss! If this means InXile is planning on doing a deal with SJG then why not do a deal for a tabletop ruleset which is actually a) popular, and b) still being actively played with a large fanbase, like I dunno... GURPS! Which has dozens of different settings.

Autoduel isn't even in print anymore.



Roger Wilco
Scholar

Posts: 228
Joined: March 12th, 2012, 4:04 pm

Autoduel is a classic and makes my top 10 of computer games for sure. If you are referring to GURPS Autoduel not being in print, Car Wars 6 edition is currently being worked on by SJ Games and we will see it soon.

It's actually perfect timing, if a deal was worked out with Steve Jackson Games.

Who knows if that's the case though.

Re: inXile has trademarked Autoduel

by [TheMetal1](#) » November 27th, 2015, 10:20 pm

“ Ronin73 wrote:

IIRC? GURPS was supposed to be used for Fallout until Steve Jackson became uahappy with the amount of violence/language in the game and pulled the plug.

Actually I think it was The original wasteland that was based off of GURPs then had to be changed.

It will be interesting to see how this will shape up. My wild Guess is that we'll see a Kickstarter for the new 6th edition of Car Wars along with one at the same time for inXile's AutoDuel, with AutoDuel being base off of GURPs and be an RPG just like Bards and Wasteland but with a Car Component (ala Mad Max) but in isometric.

Personally not interests in a realtime car wars game, but a digital turn based car combat would be cool as part of the RPG.

Re: inXile has trademarked Autoduel

by [Drool](#) » November 28th, 2015, 11:51 am

Nah. Wasteland was always MSPE.

Alva nasci korlini das.

I neither work, nor speak, for inXile.

Not too late; make it eight!



Drool
Forum Moderator

Posts: 7904
Joined: March 17th, 2012, 9:58 pm
Location: Under Tenebrosia, doing shots with Scedu.



Re: inXile has trademarked Autoduel

by [owenmp](#) » January 17th, 2016, 1:38 pm

I hope the legal issues can be resolved. A sequel or remake of Autoduel developed by inXile would be outstanding.

Steve Jackson Games not super happy with Brian Fargo/inXile Autoduel reboot

<http://www.neogaf.com/forum/showthread.php?t=1168031>

NeoGAF Forums

January 08, 2016

owenmp
Acolyte

Posts: 79
Joined: March 6th, 2012, 5:53 pm

Re: inXile has trademarked Autoduel

by **macksting** » January 17th, 2016, 2:32 pm

“ TheMetal1 wrote:

Actually I think it was The original wasteland that was based off of GURPs then had to be changed.

Wasn't that Fallout?

macksting
Explorer

Posts: 449

Joined: May 24th, 2012, 5:09 am



Re: inXile has trademarked Autoduel

by **SagaDC** » January 17th, 2016, 3:09 pm

“ macksting wrote:

“ TheMetal1 wrote:

Actually I think it was The original wasteland that was based off of GURPs then had to be changed.

Wasn't that Fallout?

SagaDC
Grandmaster

Posts: 3075

Joined: May 2nd, 2012, 5:51 am

Yes, Fallout was originally supposed to use the GURPS rules system. Steve Jackson Games dropped out once they saw the amount of graphic violence that was planned for the game, prompting Interplay to develop their own in-house rules system instead.

Wasteland used a separate tabletop RPG system called "Mercenaries, Spies, and Private Eyes". It was an ideal fit, because Mike Stackpole actually designed the MSPE system, and he was also part of the team that developed Wasteland.

Re: inXile has trademarked Autoduel

by **macksting** » January 17th, 2016, 3:50 pm

Thanks, somehow I never knew about Mercenaries, Spies and Private Eyes.

macksting
Explorer

Posts: 449

Joined: May 24th, 2012, 5:09 am



Re: inXile has trademarked Autoduel

by **Owenator** » January 24th, 2016, 10:11 am

I used to try to play Autoduel on the C64 back in the 80s. I liked the concept but at the time my buddies C64 had a hard time with the game.

I would be up for backing a reboot by inXile.

What me worry?



Owenator
Initiate

Posts: 6

Joined: April 10th, 2012, 10:23 am

Location: Delaware USA



Re: inXile has trademarked Autoduel

by **SagaDC** » January 24th, 2016, 10:41 am

Sadly, any plans that InXile had for Autoduel will be on hold for a while. As OwenMP mentioned above, Steve Jackson Games recently filed a copyright dispute on the property. My guess would be that SJG feels the video game rights should have reverted back to them, since it is a license that has not been used in over thirty years (the original game was in 1985).

It is possible that SJG and InXile will come to an agreement, but it will be one that is less favorable for InXile because it will mean that certain portions of the money will be going to SJG (or lawyers) rather than toward any prospective development costs. At best, InXile will retain access to the license but incur additional legal or licensing costs. At worst, InXile will lose access to the license.

SJG and Brian Fargo also have a somewhat negative past relationship, due to the brief involvement that SJG had in the making of the original Fallout title. But that was long enough ago that it may have no bearing by this point.

SagaDC
Grandmaster

Posts: 3075

Joined: May 2nd, 2012, 5:51 am

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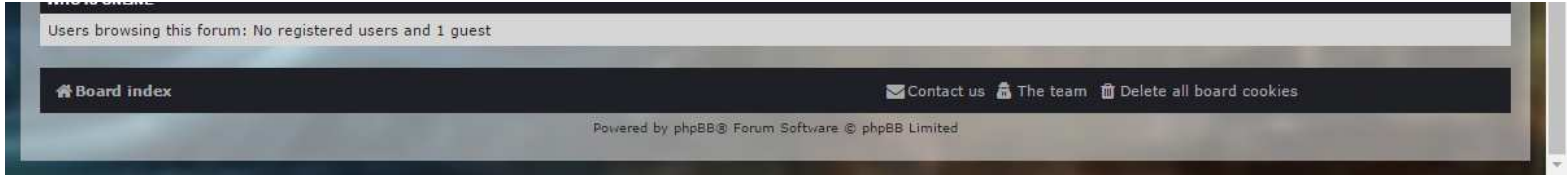
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SJG000494



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4/21/2016

EXHIBIT 40

Declaration of Brandon M. Ress

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEVE JACKSON GAMES INCORPORATED Opposer, v. INXILE ENTERTAINMENT, INC. Applicant.	Opposition No. 91225722 Serial No. 86/702,458
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**APPLICANT’S RESPONSE TO OPPOSER’S
FIRST SET OF INTERROGATORIES**

Applicant inXile Entertainment, Inc. (“Applicant”) hereby responds to Opposer Steve Jackson Games Incorporated (“Opposer”) First Set of Interrogatories, as follows:

PRELIMINARY STATEMENT

Discovery is ongoing in this action, and Applicant’s responses to these Interrogatories are based upon facts of which Applicant presently is aware and upon claims and defenses asserted or contemplated at this time. Applicant’s responses are given without prejudice to its right to supplement or modify its responses based on subsequently discovered facts or facts which become relevant based on subsequent discovery or newly asserted claims or defenses in this matter.

GENERAL OBJECTIONS

1. Applicant objects to the Interrogatories to the extent that they purport to impose any requirement or discovery obligation other than or beyond those set forth in the Federal Rules of Civil Procedure or other applicable rules.

2. Applicant objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product doctrine, the common interest doctrine or any other applicable privilege or protection. To the extent that the Interrogatories may be construed as seeking such privileged or protected information, Applicant hereby claims such privilege and invokes such protection. The fact that Applicant does not specifically object to any individual Interrogatory on the ground that it seeks such privileged or protected information shall not be deemed a waiver of the protection afforded by the attorney-client privilege, the attorney work product doctrine, the common interest doctrine or any other applicable privilege or protection. Applicant's inadvertent furnishing of such information, should that occur, shall not be construed as a waiver of any applicable privilege or other legal protection.

3. In responding to these Interrogatories, Applicant does not concede the relevancy, materiality or admissibility of any specific information, or of the subject matter to which it refers or relates. These responses are made without waiving any objections as to the competency, relevancy, materiality, or admissibility of any of the Interrogatories or responses, or the subject matter thereof, in any proceeding, including the trial of this action.

4. Applicant incorporates each of the foregoing General Objections by reference into its response to each Interrogatory set forth below.

INTERROGATORY REQUESTS AND RESPONSES THERETO

INTERROGATORY NO. 1:

Describe in detail the facts and circumstances concerning your conception, creation, selection, and adoption of the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 1:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant is planning to develop a game in which cars duel each other in the post-apocalyptic genre. Applicant decided to use “autoduel” for the game. Applicant was aware that Origin had published a game in the 1990s called autoduel, but no one had used “autoduel” since then. Applicant was also aware that Opposer was not using “autoduel” and Opposer’s registration had been abandoned.

INTERROGATORY NO. 2:

Identify all persons who were or are, responsible for or participated in, the conception, creation, selection, or adoption of any Challenged Mark.

RESPONSE TO INTERROGATORY NO. 2:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Brian Fargo.

INTERROGATORY NO. 3:

Identify each trademark search, investigation, or any other inquiry conducted by or for Applicant concerning the availability to use or register the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 3:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms “other inquiry”; (b) seeks

information that is not relevant to a claim or defense; (c) seeks confidential proprietary information; and (d) seeks information that may be protected by the attorney client privilege and/or work product doctrine.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: At some point, Applicant became aware that Opposer's autoduels mark had been abandoned, and at some point thereafter, Applicant, through its counsel, filed its intent to use application.

INTERROGATORY NO. 4:

Identify each person involved in the review of any trademark search, investigation, or other inquiry conducted by or for Applicant concerning the availability to use or register the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 4:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms "other inquiry"; (b) seeks information that is not relevant to a claim or defense; (c) seeks confidential proprietary information; and (d) seeks information that may be protected by the attorney client privilege and/or work product doctrine.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: At some point, Applicant became aware that Opposer's autoduels mark had been abandoned, and at some point thereafter, Applicant, through its counsel, filed its intent to use application.

INTERROGATORY NO. 5:

Identify by jurisdiction and registration or serial number any and all federal and state trademark registration(s) and application(s), whether current (including pending) or dead, for the Challenged Mark or any mark that resembles or incorporates the Challenged Mark in whole or in part.

RESPONSE TO INTERROGATORY NO. 5:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms “resembles or incorporates”; (b) is overbroad and unduly burdensome and oppressive; and (c) seeks information that is not relevant to a claim or defense.

INTERROGATORY NO. 6:

Identify all goods and services that Applicant has offered for sale, sold, or provided, or intends to offer for sale, sell, or provide, under or in connection with the Challenged Mark in the United States.

RESPONSE TO INTERROGATORY NO. 6:

Applicant further objects to this interrogatory on the grounds that it seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant is developing and intends to offer a car dueling game in the post-apocalyptic genre for computers, including mobile devices.

INTERROGATORY NO. 7:

For each good or service identified in your Response to Interrogatory No. 6, state the date ranges of actual and planned use of the Challenged Mark in connection with the good or service, including the specific date of first use or intended first use of the mark for each good or service.

RESPONSE TO INTERROGATORY NO. 7:

Applicant further objects to this interrogatory on the grounds that it seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant is in the process of developing the game,

and intends to release it as soon as practicable, but does not at this time have a specific plan for the exact date of release of the game.

INTERROGATORY NO. 8:

Describe the nature of any advertisements, promotional materials, and marketing materials (for example, newspaper advertisements, magazine advertisements, internet websites, television commercials, brochures), including by identifying the specific media (for example, The New York Times, Time magazine, Google.com, CBS Network television) in which Applicant is using, has used, or plans to use the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 8:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant has not developed any specific planned advertising or promotional materials for the game, but likely will use the following types of advertising, among others: Online advertisements, such as through Facebook and/or the various advertising networks that focus on user acquisition, and gaming websites.

INTERROGATORY NO. 9:

Identify all persons who were or are, responsible for or participated in, the past, current, or planned marketing or advertising of any goods or services offered for sale, sold, or intended to be offered for sale or sold by or for Applicant under or in connection with the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 9:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant has not developed any specific planned advertising or promotional materials for the game. Brian Fargo, Chris Keenan, Matthew Findley, Maxx Kaufman, Zack Vulaj, Eric Daily and Thomas Beekers have discussed plans for the game.

INTERROGATORY NO. 10:

Identify all domain names incorporating the Challenged Mark or the letter string “autoduel” that are owned, operated, or controlled by Applicant.

RESPONSE TO INTERROGATORY NO. 10:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: There are none.

INTERROGATORY NO. 11:

Describe all market research conducted by or on behalf of Applicant concerning the Challenged Mark or any goods or services marketed or proposed to be marketed under the Challenged Mark, including the results of such research.

RESPONSE TO INTERROGATORY NO. 11:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

INTERROGATORY NO. 12:

Describe all channels of trade in the United States through which Applicant has offered for sale, sold, or intends to offer for sale or sell goods or services under or in connection with the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 12:

Applicant further objects to this interrogatory on the grounds that it seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: At this time, Applicant intends to sell the game at least through the Ios and Google Android store.

INTERROGATORY NO. 13:

Describe all classes and/or types of customers (for example, age, gender, socioeconomic group) that comprise the intended market for goods or services offered for sale, sold, or intended to be offered for sale or sold under or in connection with the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 13:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: At this time, Applicant does not have plans to target a particular class or type of customer.

INTERROGATORY NO. 14:

Describe in detail all steps taken towards the offering, providing, or sale of any goods or services under or in connection with the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 14:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms “all steps taken towards”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks information that is not relevant to a claim or defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant has filed a trademark application after confirming that the mark was available. Applicant has discussed the Autoduel game internally, and has considering and is considering various internal proposals as to the nature and specifics of the game. This is an ongoing process that is typical in Applicant’s development and design of a new game. Applicant will produce documents constituting and relating to internal discussions and proposals.

INTERROGATORY NO. 15:

Describe in detail all plans you have to develop, distribute, offer, provide, or sell goods or services under the Challenged Mark during the next three years in the United States.

RESPONSE TO INTERROGATORY NO. 15:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms “plans you have”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks information that is not relevant to a claim or defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant incorporates its response to Interrogatory number 14 above. Applicant further states that it intends to release the game in the near future, but does not at this time have a specific plan for the date of release of the game.

INTERROGATORY NO. 16:

Identify and describe all expenditures incurred by you in connection with the development, production, distribution, promotion, advertisement, and sale of any goods or services under the Challenged Mark, including by identifying the nature and amount of each expenditure.

RESPONSE TO INTERROGATORY NO. 16:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Such expenditures include the salary and costs associated with the employees who have spent time, and are spending time on the game.

INTERROGATORY NO. 17:

Describe the date and circumstances of Applicant first becoming aware of Opposer's use or registration of Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 17:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms "Opposer's Mark" and because it assumes incorrectly that Opposer owns rights in the alleged marks included in Opposer's definition of "Opposer's Mark"; (b) is overbroad and unduly burdensome and oppressive; and (c) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant does not believe Opposer has any rights in Opposer's alleged "Opposer's Mark." Many years ago, Applicant became aware

Opposer used the word “autoduel” in connection with materials that were published approximately 20 to 30 years ago.

INTERROGATORY NO. 18:

Identify all surveys conducted by or on behalf of Applicant concerning the Challenged Mark or any other mark that incorporates the Challenged Mark in whole or in part, by date, title, the entity conducting the survey, and the person requesting the survey.

RESPONSE TO INTERROGATORY NO. 18:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant is not aware of any such survey.

INTERROGATORY NO. 19:

Identify all agreements concerning the Challenged Mark by date, parties to the agreement, and the subject matter of the agreement.

RESPONSE TO INTERROGATORY NO. 19:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

INTERROGATORY NO. 20:

Describe in detail any involvement by Maxx Kaufman, Pixelbionic, and/or Big Boat Interactive concerning the Challenged Mark or any goods or services intended to be offered under the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 20:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

INTERROGATORY NO. 21:

Describe in detail any communications between Applicant and any third party concerning Opposer or Opposer's Mark, and any actions taken by Applicant as a result of such communications.

RESPONSE TO INTERROGATORY NO. 21:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms "actions taken . . . as a result of such communications" and "Opposer's Mark," and because it assumes incorrectly that Opposer owns rights in the alleged marks included in Opposer's definition of "Opposer's Mark"; (b) is overbroad and unduly burdensome and oppressive; (c) seeks information that is not relevant to a claim or defense; and (d) seeks confidential proprietary information.

INTERROGATORY NO. 22:

Describe in detail any communications between Applicant and Opposer.

RESPONSE TO INTERROGATORY NO. 22:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; and (b) seeks information that is not relevant to a claim or defense.

INTERROGATORY NO. 23:

Describe each and every instance of which Applicant is aware in which any person has been in any way confused, mistaken, or deceived as to the origin or sponsorship of any goods or services sold or offered for sale under or in connection with the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 23:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant is not aware of any such confusion, mistake or deception.

INTERROGATORY NO. 24:

Describe in detail any unsolicited publicity received by Applicant as a result of its filing of Application Serial No. 86/702,458.

RESPONSE TO INTERROGATORY NO. 24:

Applicant further objects to this interrogatory on the grounds that it (a) is vague and ambiguous because of its use of the terms “unsolicited publicity”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks information that is not relevant to a claim or defense; and (d) seeks confidential proprietary information.

INTERROGATORY NO. 25:

Describe in detail any contacts you have received from customers, potential customers, or the media pertaining to the Challenged Mark, Application Serial No. 86/702,458, or this opposition proceeding.

RESPONSE TO INTERROGATORY NO. 25:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

INTERROGATORY NO. 26:

Identify all marks and names of which Applicant is aware that are used or registered by third parties in connection with games, toys, computer games, video games, role-playing games, or computer software, that include the term “Autoduel.”

RESPONSE TO INTERROGATORY NO. 26:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant is not aware of any such uses or registrations.

INTERROGATORY NO. 27:

Describe all facts that would support a contention that Applicant owns any rights in the Challenged Mark.

RESPONSE TO INTERROGATORY NO. 27:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: On July 23, 2015, Applicant filed an intent to use application for trademark registration for the Challenged Mark.

INTERROGATORY NO. 28:

Describe all facts and circumstances that support Applicant's denial of Paragraphs 1-3 of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 28:

Applicant further objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and oppressive.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: To the extent Opposer ever owned trademark rights in "Autoduel," it abandoned those rights long ago. Opposer has not used the word "Autoduel" at all since approximately 1997. Opposer's alleged "use" of the mark by making available on a website archive PDF copies of 20 year old (and older) quarterlies and other items is not "use" in the trademark sense. It is not even close to the type of "deliberate and continuous" use that is required to maintain trademark rights.

Nor has Opposer presented any evidence that it ever intended to recommence its use of "autoduel" at any time after it stopped using "autoduel."

The evidence in this case shows that Opposer was done with its use of “autoduel” in the 1990s, and had no intention of resuming any use.

Additionally, and consistent with Opposer’s cessation of use of “autoduel,” Opposer allowed its trademark registration to be abandoned, and when it filed an application after inXile filed its intent to use application, Opposer’s application was also stated as an intent to use application.

Additionally, even when Opposer used “autoduel” twenty or more years ago, it used it in a generic sense and, therefore, did not, and does not, own protectable trademark rights in “autoduel.”

INTERROGATORY NO. 29:

Describe all facts and circumstances that support Applicant’s pleaded affirmative defense of Unclean Hands.

RESPONSE TO INTERROGATORY NO. 29:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant hereby incorporates its response to interrogatory 28 above. Applicant further responds that Opposer’s claim that it owns the autoduel mark, including its claim that it has intended and intends to resume use the mark in the future, is in bad faith, and made simply because it wishes to prevent Applicant from using “autoduel.”

INTERROGATORY NO. 30:

Describe all facts and circumstances that support Applicant’s pleaded affirmative defense of Abandonment.

RESPONSE TO INTERROGATORY NO. 30:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant hereby incorporates its response to interrogatory no. 28 above.

INTERROGATORY NO. 31:

Identify all goods or services offered, intended to be offered, or marketed by Applicant that are based on, or otherwise relate to, classic computer games, computer role-playing games, role-playing settings, or tabletop games.

RESPONSE TO INTERROGATORY NO. 31:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks information that is not relevant to a claim or defense; and (c) seeks confidential proprietary information.

INTERROGATORY NO. 32:

Identify all persons that furnished information for the responses to these interrogatories, designating the number of each interrogatory for which such persons furnished information.

RESPONSE TO INTERROGATORY NO. 32:

Applicant further objects to this interrogatory on the grounds that it (a) is overbroad and unduly burdensome and oppressive; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Brian Fargo provided the information in the responses.

Dated: September 9, 2016

/s/ Ronald P. Oines

Ronald P. Oines

Lindsay J. Hulley

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document entitled **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES** was served by electronic and first class mail to the following address(es) on September 9, 2016, such being the Opposer's Domestic Representative and Correspondence as listed on the Notice of Opposition.

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*/s/ Angie Spielman*_____

EXHIBIT 41

Declaration of Brandon M. Ress

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEVE JACKSON GAMES INCORPORATED Opposer, v. INXILE ENTERTAINMENT, INC. Applicant.	Opposition No. 91225722 Serial No. 86/702,458
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**APPLICANT’S RESPONSE TO OPPOSER’S
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Applicant InXile Entertainment, Inc. (“Applicant”) hereby responds to Opposer Steve Jackson Games Incorporated (“Opposer”) First Set of Requests for Production of Documents, as follows:

PRELIMINARY STATEMENT

Discovery is ongoing in this matter, and Applicant’s responses to these Requests are based upon facts of which Applicant presently is aware and upon claims and defenses asserted or contemplated at this time. Applicant’s responses are given without prejudice to its right to supplement or modify its responses based on subsequently discovered facts or facts which become relevant based on subsequent discovery or newly asserted claims or defenses in this litigation.

GENERAL OBJECTIONS

1. Applicant objects to the Requests to the extent that they purport to impose any requirement or discovery obligation other than or beyond those set forth in the Federal Rules of Civil Procedure or other applicable rules.

2. Applicant objects to the Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product doctrine, the common interest doctrine or any other applicable privilege or protection. To the extent that the Requests may be construed as seeking such privileged or protected information, Applicant hereby claims such privilege and invokes such protection. The fact that applicant does not specifically object to any individual Request on the ground that it seeks such privileged or protected information shall not be deemed a waiver of the protection afforded by the attorney-client privilege, the attorney work product doctrine, the common interest doctrine or any other applicable privilege or protection. Applicant's inadvertent furnishing of such information, should that occur, shall not be construed as a waiver of any applicable privilege or other legal protection.

3. In responding to these Requests, Applicant does not concede the relevancy, materiality or admissibility of any specific information, or of the subject matter to which it refers or relates. These responses are made without waiving any objections as to the competency, relevancy, materiality, or admissibility of any of the Requests or responses, or the subject matter thereof, in any proceeding, including the trial of this action.

4. Applicant objects to Opposer's use of the term "Opposer's Mark" as it is vague and ambiguous and incorrectly assumes that Opposer owns rights in the alleged marks included in Opposer's definition of "Opposer's Mark."

5. Applicant incorporates each of the foregoing General Objections by reference into its response to each Request set forth below.

REQUESTS FOR PRODUCTION OF DOCUMENTS
AND RESPONSES THERETO

REQUEST NO. 1:

All Documents identified in Applicant's initial disclosures, or any supplements thereto, pursuant to Federal Rule of Civil Procedure 26.

RESPONSE TO REQUEST NO. 1:

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 2:

All Documents identified in response to Opposer's First Set of Interrogatories to Applicant.

RESPONSE TO REQUEST NO. 2:

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 3:

All Documents relied upon by Applicant in drafting the answer.

RESPONSE TO REQUEST NO. 3:

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 4:

All Documents concerning the denials in paragraphs 1-3 of the answer relating to Opposer's Mark.

RESPONSE TO REQUEST NO. 4:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "concerning the denials"; and (b) is overbroad and unduly burdensome and oppressive.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 5:

All Documents concerning Applicant's affirmative defenses and the circumstances surrounding Applicant's actual discovery of facts supportive of its affirmative defenses.

RESPONSE TO REQUEST NO. 5:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "concerning" and "circumstances surrounding"; and (b) is overbroad and unduly burdensome and oppressive.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 6:

All Documents concerning Applicant's consideration, selection, conception, creation, or adoption of the Challenged Mark for use on or in connection with any goods or services.

RESPONSE TO REQUEST NO. 6:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “concerning Applicant’s consideration, selection, conception, creation, or adoption of the Challenged Mark”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 7:

Documents sufficient to identify all persons who were responsible for, participated in, or have information or were consulted concerning the consideration, selection, conception, creation, or adoption of the Challenged Mark for use on or in connection with any of Applicant’s goods or services.

RESPONSE TO REQUEST NO. 7:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “consideration, selection, conception, creation, or adoption of the Challenged Mark”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 8:

Documents sufficient to show the circumstances of Applicant's first use of the Challenged Mark anywhere in the United States, including, but not limited to, the time, place, and manner of such use.

RESPONSE TO REQUEST NO. 8:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "first use"; (b) is overbroad and unduly burdensome and oppressive; and (c) seeks documents that are not relevant to a claim of defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 9:

Documents sufficient to show the circumstances of Applicant's first use of the Challenged Mark in United States commerce, including, but not limited to, the time, place, and manner of such use.

RESPONSE TO REQUEST NO. 9:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "circumstances of Applicant's first use"; (b) is overbroad and unduly burdensome and oppressive; and (c) seeks documents that are not relevant to a claim of defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 10:

All Documents concerning any federal trademark or service mark application filed by Applicant for the Challenged Mark, including, but not limited to, all Documents concerning the decision to file the application and copies of all documents submitted to or received from the United States Patent and Trademark Office in connection with the application.

RESPONSE TO REQUEST NO. 10:

Applicant further objects to this request on the grounds that it is overbroad and unduly burdensome and oppressive.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 11:

All Documents concerning any state trademark registrations sought or obtained by Applicant for the Challenged Mark, including, but not limited to, copies of all documents submitted to or received from any state trademark registration agency.

RESPONSE TO REQUEST NO. 11:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it has no responsive documents.

REQUEST NO. 12:

Documents sufficient to identify all goods and services actually or planned or intended to be sold, offered, or licensed by Applicant under or in connection with any Challenged Mark.

RESPONSE TO REQUEST NO. 12:

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 13:

Documents sufficient to show any plans for development or expansion of the goods or services that are offered, sold, provided, or licensed in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 13:

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 14:

Documents sufficient to identify all channels of trade through which Applicant advertises, promotes, distributes, sells, offers, or licenses, or plans to advertise, promote, distribute, sell, offer, or license, any goods or services under or in connection with the Challenged Mark, including, but not limited to, documents identifying the distributors, retail, or other business outlets that offer or will offer Applicant's goods or services in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 14:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 15:

Documents sufficient to show each visual, oral, and other manner in which Applicant has presented or authorized the presentation of the Challenged Mark, including, but not limited to, all pronunciations of and typestyles, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 15:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “visual, oral and other manner”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 16:

Representative samples of each type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items) that has displayed or that will display the Challenged Mark, including documents sufficient to show every manner of presentation of the Challenged Mark in each type of advertisement or promotional material.

RESPONSE TO REQUEST NO. 16:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 17:

Representative samples of all tags, labels, signs, and packaging that have displayed or that will display the Challenged Mark, including documents sufficient to show every manner of presentation of the Challenged Mark in such materials.

RESPONSE TO REQUEST NO. 17:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able

to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 18:

All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, or other), concerning any Challenged Mark, whether or not authored by any official member of the press.

RESPONSE TO REQUEST NO. 18:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “media coverage” and “official member of the press”; (b) is overbroad and unduly burdensome and oppressive; and (c) seeks documents that are not relevant to a claim of defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 19:

Documents sufficient to identify all persons actually or intended to be employed, retained, or engaged by Applicant to advertise or promote the Challenged Mark or any goods or services under or in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 19:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

REQUEST NO. 20:

Documents sufficient to identify the target purchasers or potential purchasers of goods or services actually or planned or intended to be sold, offered, distributed, or licensed by Applicant under or in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 20:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “target purchasers” and “potential purchasers”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 21:

All Documents concerning or identifying any person who has contacted you regarding the Challenged Mark or any goods or services intended to be offered in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 21:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “regarding the Challenged Mark”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

REQUEST NO. 22:

Documents sufficient to identify any graphic, package, product, or other designers contacted or engaged by Applicant with respect to the preparation of any

materials bearing or otherwise using the Challenged Mark, and all Documents concerning Communications between Defendant and each designer.

RESPONSE TO REQUEST NO. 22:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

REQUEST NO. 23:

All Documents concerning Applicant's knowledge of Opposer or Opposer's Mark, including, but not limited to, all Documents concerning Communications about or with Opposer or about Applicant's awareness of Opposer's use of Opposer's Mark.

RESPONSE TO REQUEST NO. 23:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "concerning Applicant's knowledge"; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

REQUEST NO. 24:

All Documents concerning any trademark searches, trademark clearances, internet print-outs, and other inquiries conducted by or on behalf of Applicant concerning the availability to use or register the Challenged Mark.

RESPONSE TO REQUEST NO. 24:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 25:

All Documents concerning any opinion letter, analysis, or other Communication concerning whether Applicant has the freedom, right, or ability to use or register the Challenged Mark as a trademark, service mark, domain name, or other designation of origin, including the opinion Document and Documents sufficient to show the identity of the individual or entity that requested the opinion, when the opinion was requested, and who prepared the opinion.

RESPONSE TO REQUEST NO. 25:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “opinion letter, analysis, or other Communication”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; (d) seeks confidential proprietary information; and (e) seeks documents that are protected by the attorney client privileged and/or the work product doctrine.

REQUEST NO. 26:

All studies, surveys, investigations, research, development, analyses, or opinions concerning the Challenged Mark, including, but not limited to, any such Documents comparing the Challenged Mark to Opposer’s Mark or concerning any actual confusion or likelihood of confusion between the Challenged Mark (or any mark that incorporates the Challenged Mark or is similar thereto) and Opposer’s Mark.

RESPONSE TO REQUEST NO. 26:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “studies, surveys investigations, research, development, analyses, or opinions”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; (d) seeks confidential proprietary information; and (e) seeks documents that are protected by the attorney client privilege and/or the work product doctrine.

REQUEST NO. 27:

Documents sufficient to show any complaint, petition, demand, objection, administrative proceeding, or civil action made by or against Applicant in which any trademark, trade dress, dilution, unfair competition, copyright, or domain name claims were asserted.

RESPONSE TO REQUEST NO. 27:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; and (b) seeks documents that are not relevant to a claim of defense.

REQUEST NO. 28:

All Documents concerning any complaint, petition, demand, objection, administrative proceeding, or civil action concerning the Challenged Mark.

RESPONSE TO REQUEST NO. 28:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “complaint, petition, demand, objection”; (b) is overbroad and unduly burdensome and oppressive; and (c) seeks documents that are not relevant to a claim of defense.

REQUEST NO. 29:

All Documents concerning any observations, perceptions, impressions, or inquiries of any person as to whether the goods or services actually or planned to

be sold, offered, provided, or licensed by or on behalf of Applicant under or in connection with the Challenged Mark are produced, sponsored, or endorsed by, or in any manner associated or affiliated with, Opposer or any goods or services offered under or in connection with Opposer's Mark.

RESPONSE TO REQUEST NO. 29:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "observations, perceptions, impressions, or inquiries"; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 30:

All Documents concerning any instances of actual or possible confusion, mistake, deception, or association of any kind between Opposer, Opposer's Mark or Opposer's goods or services on the one hand, and Applicant, the Challenged Mark or Applicant's goods or services on the other hand.

RESPONSE TO REQUEST NO. 30:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "actual or possible confusion, mistake, deception or association"; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able

to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 31:

All Documents concerning any Communications in which any person inquired about, commented on or mentioned Opposer, Opposer's Mark, or Opposer's goods or services in any way.

RESPONSE TO REQUEST NO. 31:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

REQUEST NO. 32:

All agreements between or among Applicant and any other person concerning the Challenged Mark, or the actual or planned manufacture, advertisement, promotion, marketing, distribution, sale, offer, or licensing of any goods or services under or in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 32:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

REQUEST NO. 33:

Documents sufficient to show Applicant's registration, licensing, current or previous ownership, or transfer of any domain name that incorporates the Challenged Mark, in whole or in part.

RESPONSE TO REQUEST NO. 33:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

REQUEST NO. 34:

All Documents concerning Opposer or any goods or services sold, offered, or licensed, directly or indirectly, by or on behalf of Opposer under or in connection with Opposer's Mark that are not responsive to or that you are not otherwise producing in response to any other request contained herein.

RESPONSE TO REQUEST NO. 34:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; and (b) seeks documents that are not relevant to a claim of defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 35:

Documents sufficient to show all third party marks of which Applicant is aware that resemble or are similar to the Challenged Mark or Opposer's Mark and that are used or registered in connection with games, toys, computer games, video games, role-playing games, or computer software.

RESPONSE TO REQUEST NO. 35:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; and (b) seeks documents that are not relevant to a claim of defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 36:

Documents sufficient to show all steps taken towards the offering, providing, and sale of any goods or services under or in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 36:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “all steps taken towards”; (b) is overbroad and unduly burdensome and oppressive; (c) seeks documents that are not relevant to a claim of defense; and (d) seeks confidential proprietary information.

REQUEST NO. 37:

Documents sufficient to show all plans you have to manufacture, distribute, offer, provide, or sell goods or services under or in connection with the Challenged Mark during the next three years in the United States.

RESPONSE TO REQUEST NO. 37:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

REQUEST NO. 38:

All Documents concerning the involvement of Maxx Kaufman, Pixelbionic, or Big Boat Interactive in any plans you have to manufacture, distribute, offer, provide, or sell goods or services under or in connection with the Challenged Mark.

RESPONSE TO REQUEST NO. 38:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

REQUEST NO. 39:

To the extent not produced in response to the foregoing requests, all Documents that support or refute Applicant's defense of this proceeding, including, but not limited to, any Documents that support or refute any factual allegations or legal theories or conclusions Applicant has presented or relied on or intends to present or rely on in connection with such defense.

RESPONSE TO REQUEST NO. 39:

Applicant further objects to this request on the grounds that it (a) is overbroad and unduly burdensome and oppressive; (b) seeks documents that are not relevant to a claim of defense; and (c) seeks confidential proprietary information.

Subject to and without waiving any of the foregoing objections, Applicant further responds that it will produce responsive nonprivileged documents it is able to locate in its possession, custody or control, to the extent any exist and have not already been produced.

Dated: September 9, 2016

/s/ Ronald P. Oines

Ronald P. Oines

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document entitled **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** was served by electronic and first class mail to the following address(es) on September 9, 2016, such being the Opposer's Domestic Representative and Correspondence as listed on the Notice of Opposition.

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ATTORNEYS FOR OPPOSER

/s/ Angie Spielman

EXHIBIT 42

Declaration of Brandon M. Ress

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STEVE JACKSON GAMES INCORPORATED Opposer, v. INXILE ENTERTAINMENT, INC. Applicant.	Opposition No. 91225722 Serial No. 86/702,458
---	--

**APPLICANT’S RESPONSE TO OPPOSER’S
FIRST SET OF REQUESTS FOR ADMISSIONS**

Applicant InXile Entertainment, Inc. (“Applicant”) hereby responds to Opposer Steve Jackson Games Incorporated (“Opposer”) First Set of Requests for Admissions, as follows:

GENERAL OBJECTIONS

1. Applicant objects to the Requests insofar as they seek to impose greater obligations on Applicant than those permitted under Rule 36 of the Federal Rules of Civil Procedure or other applicable rules.
2. In responding to these Requests, Applicant does not concede the relevancy, materiality or admissibility of any specific information, or of the subject matter to which it refers or relates. These responses are made without waiving any objections as to the competency, relevancy, materiality, or admissibility of any of the Requests or responses, or the subject matter thereof, in any proceeding, including the trial of this action.
3. Applicant incorporates each of the foregoing General Objections by

reference into its response to each Request set forth below.

4. Subject to, and without waiving any of Applicant's general or specific objections and reservations to the Requests set forth in these responses, Applicant responds to the Requests, as follows:

REQUESTS FOR ADMISSION AND RESPONSES THERETO

REQUEST NO. 1:

You were aware of Opposer prior to filing Application Serial No. 86/702,458.

RESPONSE TO REQUEST NO. 1:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Admit.

REQUEST NO. 2:

You were aware of the AUTODUEL game released by Origin Systems in 1985 prior to filing Application Serial No. 86/702,458.

RESPONSE TO REQUEST NO. 2:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Admit.

REQUEST NO. 3:

You were aware of Opposer's Mark prior to filing Application Serial No. 86/702,458.

RESPONSE TO REQUEST NO. 3:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "Opposer's Mark" and because it

assumes incorrectly that Opposer owns rights in the alleged marks included in Opposer's definition of "Opposer's Mark"; (b) is overbroad and unduly burdensome and oppressive; and (c) seeks information that is not relevant to a claim of defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant denies that Opposer owns any such mark and, therefore, Applicant denies this request.

REQUEST NO. 4:

You were aware of Opposer's CAR WARS game prior to filing Application Serial No. 86/702,458.

RESPONSE TO REQUEST NO. 4:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the term "CAR WARS game"; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Admit.

REQUEST NO. 5:

You have received consumer inquiries regarding whether your proposed use of the Challenged Mark is connected to the AUTODUEL game released by Origin Systems in 1985.

RESPONSE TO REQUEST NO. 5:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms "consumer inquiries" and "connected to"; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 6:

You have received consumer inquiries regarding whether your proposed use of the Challenged Mark is connected to Opposer.

RESPONSE TO REQUEST NO. 6:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “consumer inquiries” and “connected to”; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 7:

You have received consumer inquiries regarding whether your proposed use of the Challenged Mark is connected to Opposer’s CAR WARS game.

RESPONSE TO REQUEST NO. 7:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “consumer inquiries” and “connected to”; (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 8:

You have received consumer inquiries regarding whether your proposed use of the Challenged Mark is connected to Opposer’s Mark.

RESPONSE TO REQUEST NO. 8:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “consumer inquiries” and “connected to” and “Opposer’s Mark,” and because it assumes incorrectly that Opposer owns rights in the alleged marks included in Opposer’s definition of

“Opposer’s Mark”; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 9:

You have received media inquiries regarding whether your proposed use of the Challenged Mark is connected to the AUTODUEL game released by Origin Systems in 1985.

RESPONSE TO REQUEST NO. 9:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “media inquiries” and “connected to”; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Admit.

REQUEST NO. 10:

You have received media inquiries regarding whether your proposed use of the Challenged Mark is connected to Opposer.

RESPONSE TO REQUEST NO. 10:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “media inquiries” and “connected to”; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Admit.

REQUEST NO. 11:

You have received media inquiries regarding whether your proposed use of the Challenged Mark is connected to Opposer’s CAR WARS game.

RESPONSE TO REQUEST NO. 11:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “media inquiries” and “connected to”; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 12:

You have received media inquiries regarding whether your proposed use of the Challenged Mark is connected to Opposer’s Mark.

RESPONSE TO REQUEST NO. 12:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “media inquiries” and “connected to” and “Opposer’s Mark,” and because it assumes incorrectly that Opposer owns rights in the alleged marks included in Opposer’s definition of “Opposer’s Mark”; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 13:

Your game The Bard’s Tale IV is a successor to the Bard’s Tale computer role-playing game trilogy created by Interplay Productions.

RESPONSE TO REQUEST NO. 13:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “successor”; and (b) seeks information that is not relevant to a claim or defense.

REQUEST NO. 14:

You funded The Bard’s Tale IV, in whole or in part, through Kickstarter.

RESPONSE TO REQUEST NO. 14:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 15:

Your game Wasteland 2 is a sequel to the 1988 computer roleplaying game Wasteland.

RESPONSE TO REQUEST NO. 15:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 16:

You funded Wasteland 2, in whole or in part, through Kickstarter.

RESPONSE TO REQUEST NO. 16:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 17:

Your game Torment: Tides of Numenera is set in the world of Monte Cook's tabletop RPG setting, Numenera.

RESPONSE TO REQUEST NO. 17:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 18:

Your game Torment: Tides of Numenera continues the thematic legacy of the 1999 computer role-playing game Planescape: Torment.

RESPONSE TO REQUEST NO. 18:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “continues the thematic legacy”; and (b) seeks information that is not relevant to a claim or defense.

REQUEST NO. 19:

You funded Torment: Tides of Numenera, in whole or in part, through Kickstarter.

RESPONSE TO REQUEST NO. 19:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 20:

Your game Choplifter HD is based on the 1982 game Choplifter developed by Dan Gorlin.

RESPONSE TO REQUEST NO. 20:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 21:

You intend to use the Challenged Mark in connection with a computer role-playing game.

RESPONSE TO REQUEST NO. 21:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 22:

You intend to fund a computer game in connection with the Challenged Mark, in whole or in part, through Kickstarter.

RESPONSE TO REQUEST NO. 22:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 23:

You intend to distribute a game under the Challenged Mark via Steam.

RESPONSE TO REQUEST NO. 23:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Applicant has not made any final decision as to Steam and on that basis denies this request.

REQUEST NO. 24:

You intend to produce a game under the Challenged Mark that is a sequel to the 1985 game AUTODUEL developed by Origin Systems.

RESPONSE TO REQUEST NO. 24:

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 25:

You intend to produce a game under the Challenged Mark that is a spiritual successor to the 1985 game AUTODUEL developed by Origin Systems.

RESPONSE TO REQUEST NO. 25:

Applicant further objects to this request on the grounds that it is vague and ambiguous because of its use of the terms “spiritual successor.”

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 26:

You intend to produce a game that is a sequel to the 1985 game AUTODUEL developed by Origin Systems.

RESPONSE TO REQUEST NO. 26:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 27:

You intend to produce a game that is a spiritual successor to the 1985 game AUTODUEL developed by Origin Systems.

RESPONSE TO REQUEST NO. 27:

Applicant further objects to this request on the grounds that it (a) is vague and ambiguous because of its use of the terms “spiritual successor”; and (b) seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 28:

Maxx Kaufman is an employee of Applicant.

RESPONSE TO REQUEST NO. 28:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Admit.

REQUEST NO. 29:

Maxx Kaufman was a co-founder of Applicant.

RESPONSE TO REQUEST NO. 29:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 30:

Maxx Kaufman was a co-founder of Pixelbionic.

RESPONSE TO REQUEST NO. 30:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 31:

Maxx Kaufman is involved in the development of any goods or services under the Challenged Mark.

RESPONSE TO REQUEST NO. 31:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

REQUEST NO. 32:

You intend to use the Challenged Mark in connection with the vehicle combat game project started at Pixelbionic under the name “Autoduel”.

RESPONSE TO REQUEST NO. 32:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 33:

You intend to use the Challenged Mark in connection with the “Motorgun” vehicle combat game project started at Pixelbionic.

RESPONSE TO REQUEST NO. 33:

Applicant further objects to this request on the grounds that it seeks information that is not relevant to a claim or defense.

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Deny.

REQUEST NO. 34:

You intend to use the Challenged Mark in connection with a vehicle combat game.

RESPONSE TO REQUEST NO. 34:

Applicant further objects to this request on the grounds that it is vague and ambiguous because of its use of the terms “vehicle combat game.”

Subject to and without waiving any of the foregoing objections, Applicant further responds as follows: Admit.

Dated: September 9, 2016

/s/ Ronald P. Oines

Ronald P. Oines

Lindsay J. Hulley

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document entitled **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS** was served by electronic and first class mail to the following address(es) on September 9, 2016, such being the Opposer's Domestic Representative and Correspondence as listed on the Notice of Opposition.

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ATTORNEYS FOR OPPOSER

*/s/ Angie Spielman*_____

EXHIBIT 43

Declaration of Brandon M. Ress

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEVE JACKSON GAMES,)	Opposition No.
INCORPORATED,)	91225722
)	
Opposer,)	Serial No. 86/702,458
)	
vs.)	
)	
INXILE ENTERTAINMENT, INC.,)	
)	
Applicant.)	
_____)	

DEPOSITION OF FRANK BRIAN FARGO

Costa Mesa, California

Tuesday, September 13, 2016

Reported by:
JODI MONROE, RPR, CLR
CSR No. 13010
JOB No. 10225X

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

4	STEVE JACKSON GAMES,)	Opposition No.
	INCORPORATED,)	91225722
5)	
	Opposer,)	Serial No. 86/702,458
6)	
	vs.)	
7)	
	INXILE ENTERTAINMENT, INC.,)	
8)	
	Applicant.)	
9)	

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Deposition of FRANK BRIAN FARGO, taken on behalf of Opposer, at 611 Anton Boulevard, 14th Floor, Costa Mesa, California, beginning at 9:11 a.m. and ending at 2:33 p.m. on Tuesday, September 13, 2016, before JODI MONROE, RPR, CLR, Certified Shorthand Reporter No. 13010.

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2

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25 * Confidential - Attorneys' eyes only

1 Costa Mesa, California, Tuesday, September 13, 2016

2 9:11 a.m. - 2:33 p.m.

3 -oOo-

4 THE REPORTER: Pursuant to the Federal Rules of
5 Civil Procedure, I am required to state the following:
6 My name is Jodi Monroe. My business address is 801
7 North Parkcenter Drive, Suite 107, Santa Ana, California
8 92705. This is the deposition of Brian Fargo in the
9 matter of Steve Jackson Games, Incorporated versus
10 inXile Entertainment, Inc., beginning at 9:11 a.m., on
11 Tuesday, September 13, 2016. This deposition is taking
12 place at Rutan & Tucker, 611 Anton Boulevard, 14th
13 Floor, Costa Mesa, California.

14 Counsel, will you please state your appearances
15 for the record.

16 MR. THOMPSON: Brad Thompson or behalf of Steve
17 Jackson Games.

18 MR. OINES: Ron Oines for inXile Entertainment,
19 Inc.

20 -oOo-

21 FRANK BRIAN FARGO,
22 having been first duly sworn, was examined and testified
23 as follows:

24 -oOo-

25 MR. THOMPSON: I guess just a bit of

1 housekeeping. Mr. Oines, before we start, is Mr. Fargo
2 here as the 30(b)6 representative for inXile
3 Entertainment?

4 MR. OINES: He is.

5 -oOo-

6 EXAMINATION

7 BY MR. THOMPSON:

8 Q Good morning, Mr. Fargo.

9 **A Good morning.**

10 Q Again, my name is Brad Thompson. I represent
11 Steve Jackson Games.

12 Have you ever given a deposition before?

13 **A You know, I was thinking yesterday. Ron asked**
14 **me and I thought that I had, but I don't know if I have**
15 **before. I've been on the stand, but I don't know for**
16 **sure. It's been a long time --**

17 Q Sure.

18 **A -- if I have.**

19 Q So just a bit of a refresher then, of kind of
20 how the process will work. Ms. Monroe is our court
21 reporter. She will do her best to get all of my
22 questions in. I'll do my best to then give you a chance
23 to give your complete answer. We should try to not talk
24 over one another, just because it makes it harder for
25 her to get the questions and answers down.

1 The other thing that can happen, sometimes in
2 deposition -- and my wife accuses me of mumbling. So if
3 you don't understand a question, just let me know, I'll
4 try to restate it. And the other thing that won't come
5 through in the written transcript is kind of head
6 nodding yes and no, that kind of thing. So try to give
7 verbal answers.

8 Is that okay?

9 **A Yeah, of course.**

10 Q Would you state your full name and address just
11 for the record.

12 **A So my full name is Frank Brian Fargo. I go by**
13 **my middle name. And which address, my business or home?**

14 Q Why don't you just give your business.

15 **A It's 2727 Newport Boulevard, Number 200,**
16 **Newport Beach, California 92663.**

17 Q My understanding is that's inXile -- is that
18 inXile's primary location?

19 **A Yes.**

20 Q And my understanding is you guys also have an
21 office in Louisiana as well?

22 **A Yeah, we just recently opened an office in**
23 **New Orleans in December, I believe.**

24 Q Let's talk just a little bit about what you did
25 to prepare for your deposition today. What all did you

1 do to prepare for your depo today?

2 **A You mean, well, over the past month or -- I'm**
3 **not sure -- do you mean --**

4 Q Anything that you would have considered as part
5 of your prep for giving testimony today.

6 **A Well, primarily, I guess I filled out a set of**
7 **interrogatories that Rutan sent me, reread them, and I**
8 **also -- perhaps not -- I don't know if this applies**
9 **getting ready for it, but there was a bunch of discovery**
10 **requests put on me. So I collected all of the e-mails**
11 **that I could on the subject.**

12 Q Did you also have an opportunity to meet with
13 your counsel to prepare for the deposition?

14 **A Yes, I did.**

15 Q And when did you meet with your counsel to
16 prepare for your depo?

17 **A I met with Ron yesterday.**

18 Q Approximately, how long did you meet with Ron
19 yesterday?

20 **A I'd say we talked for maybe two hours, hour and**
21 **a half.**

22 Q Did you review any documents during that time?

23 **A No, we didn't.**

24 MR. THOMPSON: I'm going to hand you a series
25 of documents throughout today, and I'll mark them with

1 exhibit numbers. I'm marking this one as Exhibit
2 Number 63, which is just a continuation of exhibits that
3 we've been using for all of the various depositions in
4 this case.

5 (Deposition Exhibit 63 was marked for
6 identification by the court reporter.)

7 BY MR. THOMPSON:

8 Q This is what we would refer to as a 30(b)(6)
9 notice. I just want to ask you if you've had a chance
10 to review this document and the topics that are
11 listed -- the 23 topics that are listed on the back few
12 pages?

13 **A I believe so. I've had so many documents**
14 **recently.**

15 Q Sure. It's not a trick question. I just want
16 to make sure that you're the person that's here to talk
17 about the topics that start on page 6 of this document.

18 So why don't you turn to page 6. And just, you
19 know, you can read to yourself the topics and just let
20 me know if you're the right person for me to be talking
21 to about these various issues.

22 **A Well, I would be the right person to be**
23 **speaking with.**

24 Q Before we get into talking about Autoduel and
25 the trademark issues in the case, I want to talk a

1 little bit about your background, both your educational
2 background and up through your employment history.

3 There's a couple of ways we can do it, and I'm
4 comfortable doing it whichever way you prefer. I can
5 ask you where did you go to high school, did you go to
6 college, one by one, and you can walk us through that.

7 So why don't you start with, did you graduate
8 from high school?

9 **A I did, I graduated from Corona Del Mar High**
10 **School.**

11 Q So what year was that?

12 **A '81.**

13 Q So starting from kind of '81 and your
14 graduation, can you walk us through any educational
15 history, as well as your employment history, up to
16 today?

17 **A Yes. Well, let's see -- well, I started my**
18 **first game company while I was still in high school.**

19 Q What was that company called?

20 **A It was called Saber Software.**

21 Q What did Saber Software do?

22 **A We did a -- I did a graphic adventure game. I**
23 **say "we," because I had some people do some contract**
24 **work for me, but it was primarily me. And, in fact, I**
25 **released that first game in 1981.**

1 Q What was that game called?

2 A **Demon's Forge. So in a way I've been in the**
3 **business since 1981, but I was still in high school.**

4 And then I went to Saddleback College for a
5 **very short while. Primarily my focus was going to be in**
6 **sports, actually. I was just telling Ron this morning**
7 **about being a decathlete.**

8 And then I decided that computers were too
9 **exciting to pass up, so I dropped out of Saddleback and**
10 **then -- actually, I forget. Then I went to Orange Coast**
11 **College for one -- I don't know if it was a year or a**
12 **semester, because I wanted to take some business**
13 **classes. And then shortly thereafter I just went**
14 **full-time into making computer games.**

15 Q And do you recall approximately when that was
16 that you stopped kind of pursuing any kind of college
17 classes and went full-time into the computer gaming
18 business?

19 A **1982.**

20 Q And where did you go into full-time making
21 computer games, what company?

22 A **So my first job of making computer games was a**
23 **company called Boone Corporation, and that was run by a**
24 **bunch of Stanford graduates, who made me their vice**
25 **president of software development.**

1 **I worked with them for approximately a year,**
2 **and then I started Interplay in October of 1983. I'm**
3 **not good at remembering exact months and years, but that**
4 **particular one I'm good with.**

5 Q So October of 1983 you left Boone Corporation,
6 and did you form Interplay?

7 A Yeah, I might have left Boone 60 days prior to
8 October of '83. But, yeah, I did leave Boone and form
9 Interplay very shortly thereafter.

10 Q What was the full name of Interplay; do you
11 recall?

12 A I believe it was Interplay Productions, Inc.

13 Q And what was your role at Interplay
14 Productions?

15 A I was the CEO and founder.

16 Q And while you were the CEO of Interplay
17 Productions, what projects did you work on at Interplay?

18 A During its entire history?

19 Q So let's kind of -- I'll tell you what --

20 A That's probably too numerous to name.

21 Q Let's do this. Let's continue. How long were
22 you at Interplay, then what happened, and we'll just
23 come back and cover the projects later. So you start at
24 Interplay in approximately October of 1983?

25 A Yes.

1 Q How long were you with Interplay Productions?

2 A I was with Interplay until -- well, I know I
3 started inXile in 2002, and so I believe I left
4 Interplay some six months or -- somewhere between three
5 to six months prior to that.

6 I know I took a short break, but I don't
7 remember exactly how many months it was. But it
8 certainly was not, I don't believe, longer than six
9 months. And it wasn't a year.

10 Q Why did you leave Interplay and start inXile in
11 approximately 2002?

12 A That's a book.

13 Q Give me the CliffsNotes version of the book.

14 A Oh, my gosh. Okay. I just need to think of a
15 good answer without spending 20 minutes on it. Well,
16 through a series of different financial transactions my
17 ownership had been diluted down to a very small
18 percentage over the years.

19 We went -- Universal MCA bought part of the
20 company, we went public. I did a stock swap with a
21 French company, and through all of that my stock
22 ownership was quite low.

23 We were losing money at the time and I found a
24 buyer for the company, and the French company, who owned
25 a large percentage, they were -- they pushed too hard on

1 the buyer and the buyer walked away, which was very, you
2 know, disappointing.

3 And so I then had a couple other deals I was
4 pursuing and they said that they wanted to do a hostile
5 takeover, and I was exhausted at that point and I
6 flipped them the keys and wished them luck.

7 Q So you left Interplay, and then as a result of
8 that, is it fair to say, started over with inXile?

9 A Yes.

10 Q And did you form inXile with anyone else?

11 A Yes. I mean, I didn't -- not in the sense of a
12 true partnership, but there were a couple of other
13 people who were my first employees. Matt Findley was
14 one of them. Elene Campbell was one of them. John
15 Alvarado, or Juan Alvarado. And I don't remember if
16 Maxx was one of those first ones or not.

17 Q Maxx Kaufman?

18 A Yes. He could have been. I don't remember
19 exactly who was in that first tranche of people.

20 Q And you're still at inXile today, correct?

21 A Yes.

22 Q Any intervening employment from 2002 to today,
23 or has it all been through inXile?

24 A Yeah, I've been running inXile full-time since
25 its inception.

1 Q Is your title CEO at inXile?

2 A Yes, also leader in inXile.

3 Q Right, I think I saw that somewhere, which was
4 a play on your time, I think, of leaving Interplay?

5 A Exactly, so you might see that as my title from
6 time to time.

7 Q So I'll refer to you in the depo as "CEO," if
8 that's okay?

9 A That's fine.

10 Q So let's kind of back up. We talked about your
11 time, I guess starting with Saber Software while you
12 were in high school, made your way through some college
13 courses at Saddleback and Orange Coast College?

14 A Yes.

15 Q And then went to Boone Corporation initially
16 and was promoted to the vice president of software
17 design?

18 A Promoted -- well, I mean, I came in at that
19 level.

20 Q I apologize. So you were hired --

21 A Yes.

22 Q -- as VP of software design?

23 What projects did you work on while you were at
24 Boone Corporation?

25 A So one of them was taking my Demon's Forge game

1 or no?

2 **A Yes.**

3 Q And are those other factors things that you
4 have discussed with your counsel?

5 **A Yes.**

6 Q So I'm not going to ask you to tell me those
7 items. And a bit of housekeeping, if I get into areas
8 that you've discussed with Ron or other counsel, I don't
9 want you to divulge that, and I'm not trying to probe
10 into that. Okay?

11 **A Right, nor am I trying to be evasive.**

12 Q No, I understood. I just want to make sure you
13 understand how the question is intended to be.

14 Let's talk about the projects that you've
15 worked on while at inXile. So similar questions that we
16 did for Interplay, I want to make another list of
17 projects that you've worked on or are currently working
18 on at Interplay.

19 MR. OINES: I think you misspoke. You mean
20 inXile.

21 MR. THOMPSON: Thank you. So let me start over
22 so we have a clean question.

23 BY MR. THOMPSON:

24 Q I want to ask you about your projects that
25 you've worked on at inXile. Can you describe the

1 various projects you've been involved with while at
2 inXile?

3 **A List off the games that we've worked on at**
4 **inXile?**

5 Q Yes.

6 MR. OINES: Just to be clear, with the same
7 kind of broad description of what "development" means?

8 THE WITNESS: Right, yeah, because I do have
9 varying degrees of development.

10 BY MR. THOMPSON:

11 Q Just because I think it's faster for us to get
12 through it that way.

13 **A But ultimately, I do decide what we're going to**
14 **do. So I'm involved.**

15 **So The Bard's Tale. We did Line Rider,**
16 **Fantastic Contraption, Fur Pals and Baby Pals. Those**
17 **are two games, not one. Wasteland, Torment, the Demon's**
18 **Forge, Choplifter, Impossible Quiz. That's what I**
19 **remember off the top of my head.**

20 Q So starting with -- I wrote down 10 names from
21 your list just now. Can you describe generally what
22 each of those games are?

23 **A Yeah. Can I look at the list, so I do it at**
24 **the same time?**

25 **So The Bard's Tale is a role-playing game.**

1 **Line Rider, it's almost more of an activity than a game.**
2 **It's difficult to describe. There's no goal or anything**
3 **to it. Fantastic Contraption is a puzzle game. Fur**
4 **Pals and Baby Pals are simulations. Wasteland is a**
5 **role-playing game. Torment is a role-playing game.**
6 **Demon's Forge was an action game. Choplifter, action**
7 **game. And Impossible Quiz was a quiz game.**

8 Q Are some of these games on this list of 10,
9 that can you remember off the top of your head, are they
10 remakes of earlier games?

11 MR. OINES: Objection. Vague.

12 BY MR. THOMPSON:

13 Q Do you understand my question?

14 A **Yeah, but "remake," I don't know how to use**
15 **that in this context exactly. So I don't know. What's**
16 **the definition of a "remake"?**

17 Q Let me try to ask it a different way. Are
18 there titles in this list of 10 that are based on titles
19 of earlier games?

20 A **Well, when you say "based on," they might have**
21 **shared the same name, but weren't "based on." So I'm**
22 **not trying to be difficult, but if you can -- I don't**
23 **know how to answer it, when you say "based on."**

24 So in the particular case of Wasteland, that is
25 **based on -- our Wasteland 2 is based on Wasteland.**

1 **Bard's Tale was trademark only. So it was not based on**
2 **the other game. I'm not sure how to --**

3 Q So the title was the same, but you're saying it
4 was not based on the earlier game?

5 A **No. We talk about spiritual sequels sometimes,**
6 **but I don't know whether "based on" is the right word or**
7 **not. I'm not sure if that's the right word.**

8 Q And I've seen your reference in some of your
9 publications about spiritual sequels. What do you mean
10 by that?

11 A **Well, when we say "spiritual sequel," what we**
12 **mean is that we are making a game that's usually in the**
13 **genre or maybe touches some of the sensibility points.**
14 **For example, if it was a comedy, we'd say it's a comedy,**
15 **right? But it in no way shares any copyright material**
16 **from the first one.**

17 Q So which of these games would you characterize
18 as being a spiritual successor to earlier games?

19 A **Torment. Torment, yeah.**

20 Q How would you describe these other games, like
21 The Bard's Tale, Wasteland, and the Demon's Forge and
22 Choplifter, in terms of use of, at least, a title that
23 was used in an earlier game?

24 MR. OINES: Objection. Vague.

25 THE WITNESS: Well, The Bard's Tale was just a

1 different kind of game. We did a comedy in that
2 particular case. So we didn't describe it as a
3 spiritual sequel. It was just a title that shared the
4 same name.

5 Wasteland, that was a sequel. I had use to the
6 copyright from Electronic Arts, so this was a straight
7 on sequel. The Demon's Forge had nothing to do with the
8 original game. Name only.

9 And Choplifter, was just -- we didn't call it a
10 spiritual sequel, because flying helicopters around is
11 not -- it's so general and been done a thousand times
12 that we didn't feel the need to really say that. So it
13 was a Choplifter game.

14 The original was flying around helicopters,
15 ours was too, but we did not describe it as a spiritual
16 sequel. It was, what it was. It's like car racing or
17 something.

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

1 the name "Autoduel."

2 **A Okay.**

3 Q Was that your decision to make that filing?

4 **A It was.**

5 MR. THOMPSON: I'm going to hand you what I'm
6 marking as Exhibit 74.

7 (Deposition Exhibit 74 was marked for
8 identification by the court reporter.)

9 BY MR. THOMPSON:

10 Q Take a look at that. Do you recognize
11 Exhibit 74?

12 **A It looks familiar, yep.**

13 Q Do you recognize that to be the trademark
14 application that inXile Entertainment, Inc., filed
15 seeking use of the name "Autoduel"?

16 **A Uh-huh.**

17 Q When you say uh-huh --

18 **A Yes. Sorry.**

19 Q How was the Autoduel name chosen?

20 **A I chose it because I liked the name and I knew
21 that it was available.**

22 Q When you say "you knew it was available," how
23 did you know it was available?

24 **A Well, I guess in my mind I say "knew it was
25 available," because I hadn't seen the mark get used for**

1 **decades and I knew that it recently had been abandoned**
2 **the second time.**

3 Q When you say "hadn't been used in decades,"
4 what do you mean by that?

5 A **The only time I knew of the Autoduel mark being**
6 **used was in the '90s from Origin/Electronic Arts.**
7 **Origin was a division of Electronic Arts.**

8 Q At the time you decided to file for the
9 Autoduel mark at the PTO, other than the use by Origin
10 games, were you aware of any other names of the Autoduel
11 mark?

12 A **I was not aware of any other uses of it at that**
13 **time.**

14 Q Have you become aware of any other uses, since
15 you filed for the name "Autoduel" in Exhibit 74?

16 A **Yes, I have become aware of some other uses**
17 **some 20 or 30 years ago.**

18 Q What are the other uses that you've become
19 aware of?

20 A **I think it was cars or miniatures, perhaps, and**
21 **then some kind of PDF about some rules.**

22 Q Any other uses you're aware of?

23 A **No.**

24 Q You said you decided to file it for two
25 reasons. One, you chose it because you liked the name;

1 and two, you said you knew it was available. We just
2 talked about the reasons why you believed it was
3 available. Let's talk about why you liked the name.

4 Why did you like the name?

5 **A Well, I do post-apocalyptic games and -- with**
6 **things like Mad Max or the Road Warrior. Cars fighting**
7 **and dueling with each other is a big part of that world.**
8 **So I thought it was kind a perfect name for that. And**
9 **there you go.**

10 Q When did you decide to pursue the Autoduel
11 name?

12 **A I don't remember the exact date, but somehow it**
13 **had come to my attention -- and I don't remember how --**
14 **that the mark had become abandoned again, and so that**
15 **seemed like a clear signal that it was available and --**
16 **so...**

17 Q When you say "become abandoned again," do you
18 mean that the PTO, the federal registration, had been
19 abandoned, as determined by the PTO?

20 **A Yes.**

21 Q And you say you don't recall exactly how it
22 came to your attention. Do you recall whether or not
23 you independently discovered that or did somebody tell
24 you about it?

25 **A Somebody told me, and I've been racking my**

1 **brain to remember who told me. But somehow it came to**
2 **my attention.**

3 Q Do you recall approximately when it came to
4 your attention?

5 A **I would say within a month of me filing for the**
6 **trademark.**

7 Q And the date of the filing of the trademark,
8 according to Exhibit 74, is July 23, 2015, correct?

9 A **If you say so.**

10 Q Let me just show you and make sure that I'm not
11 misstating that.

12 A **Yeah, okay.**

13 Q So is it your recollection that --

14 A **I assume that date's correct.**

15 Q Any reason to disagree with it?

16 A **No reason to disagree with it.**

17 Q So based on your testimony, you believe that
18 you would have learned that, in your mind, the mark was
19 available for you to file sometime within a month of
20 this date?

21 A **I think so.**

22 Q So sometime June, July of 2015?

23 A **I presume. I don't remember sitting on that**
24 **information for too long.**

25 Q Why would you not want to sit on that

1 information for too long?

2 **A** I find that if I like a name, I try to file for
3 it quickly because I've seen things in the past where
4 you come up with a great name and somebody
5 simultaneously files for it at the same time or right
6 before you.

7 **Q** So you wanted to make sure nobody else tried to
8 file before you filed?

9 **A** Yes.

10 **Q** Did you also choose the name "Autoduel" because
11 of the reference to the earlier 1985 game?

12 **A** Well, I thought it was a great name and I knew
13 there was a computer game before that. So it certainly
14 wouldn't hurt. But I think that the name itself would
15 be number 1.

16 **Q** When you say it wouldn't hurt, what do you mean
17 by that?

18 **A** Whenever there's any requisition value for
19 names, I find that it helps to establish yourself in a
20 crowded marketplace.

21 **Q** The crowded marketplace being your market for
22 developing games for sale?

23 **A** The game industry, yeah.

24 **Q** Do you recall whether inXile did any kind of
25 clearance search for the name "Autoduel" before it filed

1 its application for Autoduel, which is Exhibit 74?

2 **A I don't know what Rutan & Tucker does. So I**
3 **went to them first. So whatever searches they did.**

4 Q Do you know whether or not they did one?

5 **A They did some kind of search.**

6 Q So you know they did some kind of search --

7 **A Yeah.**

8 Q -- before you filed?

9 **A Yes.**

10 Q Do you know any specifics about the nature or
11 depth of that search that they performed?

12 **A I don't.**

13 Q Would you have been provided with the results
14 of that search?

15 **A I only remember a conversation about the**
16 **subject that it was --**

17 MR. OINES: Don't reveal any conversation.

18 THE WITNESS: Okay. Yeah.

19 BY MR. THOMPSON:

20 Q Did you have any discussions with any inXile
21 employees about the name "Autoduel" and your decision to
22 file for it?

23 **A Yes, I did.**

24 Q Who did you talk to?

25 **A Maxx Kaufman.**

1 Q What did you and Mr. Kaufman discuss?

2 A Well, I had known that Maxx and his partner
3 wanted to use the name at one point. They had a
4 disagreement, for lack of a better word, with Steve
5 Jackson, and they decided they couldn't afford to fight
6 it and so they acquiesced.

7 Q Who was Maxx Kaufman's partner?

8 A A guy name Mike Arkin.

9 Q Mr. Arkin was with a company called Big Boat
10 Interactive?

11 A I didn't know the name of his company, but that
12 sounds right. I think I learned that through this
13 experience.

14 Q So around the time that you believed the
15 Autoduel name could be available, you had a discussion
16 with Mr. Kaufman about it?

17 A Yes.

18 Q What did you and he discuss?

19 A I discussed that I thought he'd been bullied
20 out of the name, and they agreed but didn't want to
21 fight it. So they -- like I said, they acquiesced. And
22 then my understanding was that after that conversation
23 Steve Jackson Games went and filed an intent to use and
24 then let that lapse.

25 Q Did you tell Mr. Kaufman that you intended to

1 go and fight for the name?

2 **A I did, after I had found out that it had**
3 **lapsed.**

4 Q Did you talk to anybody else at inXile about
5 your decision to pursue the name "Autoduel"?

6 **A I probably spoke to Matt Findley about it.**

7 Q What did you talk to him about?

8 **A I think it would have been very much the same**
9 **conversation that I had with Maxx, just what my intent**
10 **was and why.**

11 Q Do you believe there's value in the name
12 "Autoduel"?

13 **A I like the name, yes.**

14 Q Do you believe there's commercial value in it?

15 MR. OINES: Objection. Vague.

16 THE WITNESS: Every trademark I apply for I
17 assume will have some commercial value. I pick them
18 because I think they'll sell.

19 BY MR. THOMPSON:

20 Q When would you say that inXile Autoduel project
21 started?

22 MR. OINES: Objection. Vague.

23 BY MR. THOMPSON:

24 Q Do you understand my question?

25 **A Well, I think we started getting ideas**

1 generated within 90 or 120 days of the filing. Sort of
2 started the process that I described earlier.

3 Q The creative process?

4 A Uh-huh.

5 Q So within 90 to 120 days of the filing in July
6 of 2015?

7 A Yeah, roughly.

8 Q Anything prior to the filing?

9 A No.

[REDACTED]

1 notice of opposition?

2 MR. OINES: Objection. Vague.

3 THE WITNESS: I'm sorry, am I supposed to be
4 answering? Are we waiting for me?

5 MR. THOMPSON: Would you read that back?

6 (Record read.)

7 MR. OINES: I object that it's vague.

8 THE WITNESS: But I still answer anyway, right?

9 MR. THOMPSON: Unless he tells you not to.

10 MR. OINES: If you know. The vagueness is I
11 don't know who "you" is.

12 THE WITNESS: Well, and I don't remember which
13 things we responded to on a per-item basis. I remember
14 sending responses back, but I don't remember if it was
15 direct to this one or some other document that was sent.

16 MR. THOMPSON: And I'm not trying to trick you
17 or be vague either. Let me hand you what's been marked
18 as Exhibit 76.

19 THE WITNESS: Okay.

20 (Deposition Exhibit 76 was marked for
21 identification by the court reporter.)

22 BY MR. THOMPSON:

23 Q Exhibit 76 is a filing by inXile Entertainment,
24 Inc., that was dated February 11, 2016. The title of it
25 is the Answer to Notice of Opposition.

1 **A Okay.**

2 Q Have you seen this document before?

3 **A I don't recall this one. It seems fairly**
4 **generic in nature, so I'm not certain.**

5 Q So this is the document that inXile filed in
6 response to Steve Jackson Games' opposition to inXile's
7 attempt to get the trademark "Autoduel."

8 **A Right.**

9 Q Take a look, if you will, page 2 of the
10 document where there's a listing of what's referred to
11 as affirmative defenses.

12 Do you see that?

13 **A Yeah.**

14 Q Let's take a look at the second affirmative
15 defense, do you see there where it says, "Unclean
16 hands"?

17 **A Uh-huh.**

18 Q The reference there says, "For a second,
19 separate affirmative defense to the opposition,
20 applicant," which is inXile, "alleges that opposer," who
21 is Steve Jackson Games, "is barred from obtaining any
22 relief due to its unclean hands."

23 Do you see that?

24 **A I do.**

25 Q What facts do you have to support that

1 statement?

2 MR. OINES: I'll just object. It's vague. And
3 calls for a legal conclusion to ask a lay witness what
4 facts he's aware of that might support an unclean hands
5 defense. And also object that I believe this is
6 identical to a request in an interrogatory that's
7 already been responded to.

8 BY MR. THOMPSON:

9 Q You can answer.

10 A I only talk in layman terms to my lawyer. So
11 I'm not quite sure where my conversations line up with
12 that phrase.

13 Q Where do you think they line up with that
14 phrase?

15 A I don't know.

16 MR. OINES: Same objections.

17 BY MR. THOMPSON:

18 Q As you sit here today, are you aware of any
19 facts that would support inXile's assertion that Steve
20 Jackson Games should be denied any relief due to it
21 having unclean hands?

22 MR. OINES: Objection. Vague. Same objection.
23 Calls for a legal conclusion asking a lay witness which
24 facts might support an unclean hands equitable defense.

25 THE WITNESS: Again, my conversations with them

1 have all been in layman's terms. So I can only speak to
2 more specifics rather than a phrase.

3 BY MR. THOMPSON:

4 Q So why don't you just speak to me in layman
5 terms then as to why you believe Steve Jackson Games is
6 not entitled to use the Autoduel trademark?

7 MR. OINES: Also, lacks foundation that this
8 lay witness understands what "unclean hands" means as a
9 legal term. I think you've failed to lay that
10 foundation.

11 MR. THOMPSON: I'm not asking about unclean
12 hands.

13 Will you read the question back, please.

14 (Record read.)

15 MR. OINES: Withdraw the objections.

16 If you understand that one, you can answer.

17 THE WITNESS: I think -- let me think how to
18 phrase it. I don't see that it has been in any use or
19 whether there was any intent to use, from everything I
20 could see. And so that's why I didn't think he has
21 rights to use it.

22 BY MR. THOMPSON:

23 Q Anything else?

24 A Letting the lapse -- the mark lapse twice was
25 further evidence of that to me. Saying he was using it,

1 but filing an attempt to use it, was further evidence he
2 wasn't using it. And my feeling is he just wants to
3 bully other people from using it, but not actually use
4 it himself, and wants to put old PDFs up on archival
5 sites in order to claim usage. So that's kind of my
6 fact pattern for why I don't think he has a right to use
7 it.

8 Q You believe that Steve Jackson Games is trying
9 to bully inXile into not using the name?

10 A I do.

11 Q Why do you believe that Steve Jackson Games is
12 trying to bully inXile?

13 A Same reason he tried to bully Maxx Kaufman from
14 using it, and then went ahead and filed an intent and
15 let it lapse. I don't know why, but it appears he just
16 doesn't want other people to use it, but doesn't want to
17 use it himself.

18 Q Is that based on any conversations you've
19 actually had with anyone at Steve Jackson Games?

20 A No, just actions.

21 Q Those actions being the ones you just testified
22 to?

23 A That's correct.

24 Q I just want to make sure there's not anything
25 else you haven't told me?

1 **A No.**

2 Q Do you have any other facts that would support
3 your view that Steve Jackson Games is trying to bully
4 inXile into not using the Autoduel mark, other than what
5 you've just testified about?

6 **A No.**

7 Q If inXile had a trademark that it believed it
8 still had use of, or the rights to, and somebody else
9 tried to take that trademark, would you view it as
10 bullying if inXile tried to prevent that other person
11 from taking the mark?

12 MR. OINES: Objection. Incomplete
13 hypothetical. Calls for speculation. Lacks foundation.

14 THE WITNESS: Answer anyway?

15 MR. OINES: If you have an answer.

16 THE WITNESS: If I thought -- or if I had a
17 mark that I was actively using, then yes, I would
18 object. But I will say that I also have a long history,
19 of when I stop using marks, of letting them go back into
20 the wild.

21 BY MR. THOMPSON:

22 Q But in an example where you believe that you
23 had a good-faith basis to continue use of a mark, would
24 you think of it as bullying if you tried to protect
25 those rights?

1 MR. OINES: Objection. Incomplete
2 hypothetical.

3 THE WITNESS: I don't know if that applies
4 here, because I don't believe he has those rights. So I
5 do consider it under the category of bullying. So I
6 don't -- he can feel that he has the rights. I feel
7 like he feels like it, but he doesn't have them.

8 BY MR. THOMPSON:

9 Q So my question to you is, if you felt like
10 inXile had rights to a mark --

11 **A If I emotionally felt like it?**

12 Q Sure, if you emotionally felt like it.

13 -- would you believe it was bullying to try to
14 protect those rights?

15 MR. OINES: Objection. Incomplete
16 hypothetical. Calls for speculation.

17 MR. THOMPSON: Can you explain what you mean by
18 "incomplete hypothetical." I haven't heard that
19 objection.

20 MR. OINES: So the hypothetical doesn't
21 include, for instance, you know, the nonuse, in this
22 case. It doesn't include filing an intent to use, when
23 you're claiming that you're actually using it. It
24 doesn't include letting two marks lapse. So that's the
25 hypothetical that I think should be given to this

1 the Steve Jackson Games Car Wars?

2 MR. OINES: Calls for speculation.

3 THE WITNESS: Well, you can reask the question.
4 I don't know what he's talking about. I know what Car
5 Wars is, but I don't know what his statement means.

6 BY MR. THOMPSON:

7 Q Tell me what you know about Car Wars?

8 **A I know there was an old board game called Car**
9 **Wars.**

10 Q Who put out that board game?

11 **A Steve Jackson Games.**

12 Q You don't know whether or not that entry might
13 be referring to the Steve Jackson Games or not?

14 **A Well, I would assume so, since he has @SJGames.**
15 **I assume to be his Twitter account.**

16 Q Let's go down a few to the avatar that says
17 Blip & Blop. Do you see that one?

18 **A I do.**

19 Q That person writes, "I've spent countless hours
20 on #Autoduel on my Atari ST. That brings back such fond
21 memories. Count me in!"

22 Do you see that?

23 **A Do you want me to comment on his grammar?**

24 Q I would appreciate you commenting that it
25 wasn't my bad question and just bad grammar.

1 In any event, do you see that?

2 **A Yes, I do.**

3 Q Notwithstanding the improper grammar, do you
4 understand that entry to be a reference to the old
5 Autoduel game that was available on Atari?

6 **A Yes, I'm assuming he's referring to the old**
7 **Origin game there.**

8 Q I want to direct your attention to the entry by
9 Wildstorm at the bottom of this page.

10 **A Yeah.**

11 Q That person writes, "@BrianFargo @RPGCodex
12 #Autoduel was awesome! Long live Autoduel!!"

13 Do you have an understanding of what that
14 reference is to?

15 MR. OINES: Calls for speculation.

16 THE WITNESS: I could assume he's talking about
17 the computer game again.

18 BY MR. THOMPSON:

19 Q The Origin systems' Autoduel games that was
20 licensed by Steve Jackson Games?

21 **A Yes. Yes.**

22 Q And then on the last page there's an entry
23 there by a gentleman -- well, I assume it's a gentleman.
24 It says Kevin Mack. Do you see that?

25 **A I do.**

1 Q It says, "@BrianFargo YES PLEASE!!!!!! AUTODUEL
2 WAS INCREDIBLE!!!!!"

3 Do you see that?

4 **A I do.**

5 Q Do you have an understanding as to whether or
6 not that's a reference to the old version of Autoduel?

7 MR. OINES: Calls for speculation.

8 THE WITNESS: Again, I can guess that it is. I
9 assume so.

10 BY MR. THOMPSON:

11 Q And then Snowy says -- the entry below that,
12 someone by the name of Snowy says, "Man, I remember
13 playing Autoduel as a wee lad. I have to admit that my
14 main source of income was poker though."

15 Do you understand that to be another reference
16 to the Autoduel game?

17 **A I would assume so.**

18 Q Did you ever send another follow-up tweet to
19 this to clarify whether there was or was not any
20 relationship between inXile and Steve Jackson Games?

21 **A I don't believe so, and nor would it be my
22 policy to comment on people's speculation on the
23 Internet.**

24 Q I'm trying to make sure there's not something
25 out there where you've clarified, in relation to this

1 tweet, whether or not there's any kind of agreement in
2 place within inXile and Steve Jackson Games related to
3 Autoduel?

4 MR. OINES: Objection. Calls for speculation.

5 THE WITNESS: My office doesn't understand the
6 difference between a patent, a trademark or a copyright.
7 So I do not believe I responded in any way to this.

8 MR. THOMPSON: I'm going to hand you what has
9 been marked as Exhibit 78, and ask you to take a look at
10 that.

11 (Deposition Exhibit 78 was marked for
12 identification by the court reporter.)

13 BY MR. THOMPSON:

14 Q Exhibit 78 is a printout of a gaming message
15 board NeoGAF. And do you see the subject line that
16 says, "Brian Fargo and inXile doing Autoduel reboot?"

17 Do you see that?

18 **A I do.**

19 Q And the first entry here says, "RPG Codex
20 spotted this one," and then it gives a screenshot of the
21 Autoduel trademark application.

22 Do you see that?

23 **A I do.**

24 Q Do you recognize that screenshot to be the same
25 screenshot that you sent out via your tweet in

1 Exhibit 77?

2 **A It appears, but that is not very discernible**
3 **for me, that tiny size, and even this is kind of hard to**
4 **read. So on the surface I can say yes, but it's not --**

5 Q The font is kind of small, but conceptually --

6 **A Yes, fair enough.**

7 Q I'm not going to ask you about any of the
8 particulars of the entry. I just want to make sure
9 we're talking about the same thing.

10 **A Okay.**

11 Q Do you see that there's several pages of
12 comments here?

13 **A I do.**

14 Q Do you know whether or not you've ever looked
15 at these comments?

16 **A I did not look at the NeoGAF comments, no.**

17 Q Let's take a look at a few of them. At the
18 bottom of page 1 there's an entry by someone going by
19 the name of nonadventurer.

20 **A Yep.**

21 Q And that person writes, "Yessss, Autoduel was
22 cool for its time. A bit too simplistic, granted, but a
23 reboot could be pretty good."

24 Do you see that?

25 **A Uh-huh.**

1 Q Any other development with Mr. Arkin and inXile
2 that you're aware of?

3 **A No.**

4 Q I believe you told me earlier, but just to make
5 sure I've asked the question, let me ask, in case I
6 didn't. You've not had any direct conversations with
7 anyone at Steve Jackson Games about inXile's current
8 intentions to use the Autoduel mark?

9 **A I have not.**

10 Q Are you aware of whether anybody else at inXile
11 has had any discussions with anyone at Steve Jackson
12 Games?

13 **A Not that I know of.**

14 Q Are you aware of any other third parties who
15 have used the Autoduel mark?

16 **A Origin Systems.**

17 Q Anyone else?

18 **A No.**

19 Q Are you aware of any tabletop games that have
20 used the Autoduel mark?

21 **A I am now.**

22 Q Who is that?

23 **A Huh?**

24 Q Who are you aware of that's used it for
25 tabletop games?

1 **A Steve Jackson Games.**

2 Q Are you aware of any board games that have used
3 the Autoduel mark?

4 MR. OINES: Objection. Vague.

5 THE WITNESS: I don't know whether he does a
6 card game or a board game. I'm not quite sure what to
7 call it.

8 BY MR. THOMPSON:

9 Q Anybody other than Steve Jackson Games that
10 you're aware of that have used --

11 **A Not that I know of.**

12 Q -- that have used the Autoduel mark?

13 **A Sorry. Not that I know of.**

14 Q Are you aware of any other role-playing games
15 that have used the Autoduel mark, other than Steve
16 Jackson Games?

17 **A I have not.**

18 Q Not aware of anybody else?

19 **A Not aware of anyone.**

20 Q Computer games we've talked about, Origin
21 Systems. Anybody other than Origin Systems that you're
22 aware of?

23 **A No.**

24 Q Same question for video games?

25 **A I don't know of anyone that's used it.**

1 Q Any other games, in general, that you're aware
2 of where somebody has used the name "Autoduel" in
3 connection with a game, other than Steve Jackson Games?

4 **A Not that I know.**

5 Q Any other goods or services that you're aware
6 of that have used Autoduel?

7 **A No.**

8 Q Are you aware of the various channels that
9 Steve Jackson Games uses to sell its products?

10 **A No.**

11 MR. THOMPSON: Off the record.

12 (Recess.)

13 MR. THOMPSON: Mr. Fargo, you've been giving
14 testimony so far today in your capacity as a 30(b)(6)
15 witness. I'm handing you what I've marked as Exhibit 95
16 to your deposition.

17 (Deposition Exhibit 95 was marked for
18 identification by the court reporter.)

19 BY MR. THOMPSON:

20 Q Do you recognize this to be the notice of
21 deposition for you in your individual capacity?

22 **A Okay.**

23 Q Is that a "yes"?

24 **A Yes.**

25 Q So I have a few more questions. If for some

1 reason during these questions you have any reason to
2 think that your answer might be different if you were
3 answering on behalf of the company, I'm not trying to
4 confuse you, or anything, so just let me know. I don't
5 think the answers would be different. So that's for you
6 to decide, not me.

7 Okay?

8 **A Yep.**

9 Q So you can set Exhibit 95 aside.

10 **A Okay.**

11 Q I want to ask you about the first time you
12 heard of Steve Jackson Games?

13 **A The first time I heard of Steve Jackson Games**
14 **was in the early '90s when we were going to license the**
15 **GURPS system for a game called Fallout.**

16 Q Tell me about that.

17 MR. OINES: Objection. Vague.

18 BY MR. THOMPSON:

19 Q What was the project that you were working on
20 for Fallout, and what was the nature of your
21 interactions with Steve Jackson Games?

22 **A So I personally wasn't interacting with Steve**
23 **Jackson Games.**

24 Q Who was?

25 **A I suspect it was Fergus Burkhart, who ran our**

1 so I tried to talk him out of that, and he wasn't going
2 to sway from his opinion. And so I said that we can't
3 do the product, because the whole product is going to be
4 like this. And so we walked away.

5 Q Were there any changes to the product as a
6 result of Steve Jackson Games and Interplay no longer
7 entering into that arrangement?

8 A Well, I wasn't involved in that detail of the
9 game, but I assume that whatever copyrighted material
10 they were going to use from Steve Jackson, they got rid
11 of that and came up with something new.

12 Q When's the first time you heard of Car Wars?

13 A I think when the Origin game came out.

14 Q So in the mid-1980s?

15 A Yeah.

16 Q Tell me what you know about the Car Wars game.

17 A I had -- I knew that Origin Systems did a deal
18 with Steve Jackson Games and came out with the Car Wars
19 game -- I'm sorry the Autoduel game. But, yeah, so that
20 was basically it.

21 Q So you knew that the Autoduel game was some
22 kind of derivative from the Car Wars game?

23 A Yeah, my thought was that EA decided not to
24 call it Car Wars and call it Autoduel. I have no idea
25 why they didn't call it Car Wars.

1 Q When's the first time that you learned that
2 Steve Jackson Games believed that it had continuing
3 rights in the name Autoduel?

4 A When he objected to the Pixelbionic product.

5 Q That would have been back in 2013, correct?

6 A That sounds right.

7 Q So back when Pixelbionic/Big Boat Interactive,
8 or whoever was doing it, that's the first time that you
9 learned that Steve Jackson Games believed that it had
10 continuing rights to the mark "Autoduel"?

11 A Yes.

12 Q Are you familiar with Steve Jackson Games'
13 Autoduel products?

14 A No.

15 Q Are you familiar with Autoduel Champions?

16 A No.

17 Q Autoduel Quarterly?

18 A No.

19 Q GURPS Autoduel?

20 A I've heard of GURPS Autoduel, yeah.

21 Q Do you know anything about it?

22 A No, just that it was a long time ago.

23 Q What about AADA Road Atlases?

24 A Not familiar with it.

25 Q What about the Autoduel America Map?

1 **A I only know about these things now through the**
2 **discovery of this process.**

3 Q Meaning through this contested proceeding
4 you've come to learn of some of these products?

5 **A That's correct.**

6 Q But prior to that, you don't have any knowledge
7 of these products?

8 **A Correct.**

9 Q You did not have any knowledge of these
10 products?

11 **A Right.**

12 Q Has inXile reviewed any of the artwork that
13 Pixelbionic had created for its MotorGun product?

14 **A I don't believe so. We're not associated with**
15 **that title in any way.**

16 Q The MotorGun title?

17 **A Yeah.**

18 Q So you know, obviously, that initially their
19 plan was to call it Autoduel, correct?

20 **A I do know that, yes.**

21 Q Just to make sure that we're not getting
22 trapped in some kind of word game, I want to make sure
23 that I'm asking you: Is there any artwork that came
24 from Mr. Kaufman's pursuit of either an Autoduel or a
25 MotorGun game that has been incorporated into anything

1 **if somehow that's a delineation. So that's what I'm**
2 **speaking to there. It's a what-have-you-done-for-me-**
3 **lately industry.**

4 Q Take a look at the fourth page.

5 A **Okay.**

6 Q There's a portion about three-quarters of the
7 way down.

8 A **It says, "How do you know what the next project**
9 **is going to be?"**

10 Q Yeah. So the question is, "So do you already
11 know what the next project is going to be?"

12 A **Right.**

13 Q It looks like your response is, "I already have
14 them super excited about working on the next thing."

15 You say, "Listen, they love this, but they've
16 been on it for three and a half years."

17 A **Yep.**

18 Q What project are you referring to there?

19 A **Torment.**

20 Q That's not Autoduel?

21 A **No.**

22 Q "They've been writing it, thinking about it,
23 talking about it. That's one thing you'll notice here.
24 We don't have handles for you to talk to. You talk to
25 me, to the writers, the producers. We don't have PR and

1 marketing in between us, because we are right there on
2 the nub and we love talking about what we do."

3 **A What a great quote.**

4 Q I agree. I like it as well.

5 **A Good.**

6 Q Just to ensure for the sake of completeness,
7 that's a discussion about Torment?

8 **A Yes.**

9 Q Not about Autoduel?

10 **A It is not.**

11 Q Flip over to the sixth page.

12 **A Yep. Is that the last page of the article?**

13 **Okay.**

14 Q Right here there's a question.

15 **A Okay.**

16 Q And you respond with, "One of my goals." Do
17 you see that?

18 **A Yeah.**

19 Q You write, "One of my goals is to do original
20 stuff."

21 **A Right.**

22 Q Is that a continuation of that earlier quote we
23 were talking about?

24 **A Yes.**

25 Q And when you say "do original stuff," what does

1 that mean?

2 **A Games that aren't based upon any franchise at**
3 **all.**

4 Q So would that be different than an Autoduel
5 project?

6 **A Yes.**

7 Q Something completely new?

8 **A That's right.**

9 Q "People say you're doing Torment, Wasteland,
10 Bard's Tale, but I do want to do original things as
11 well. The fact is, I'm slowly rebuilding my cachet of
12 belief and support, 'What have you done for me lately?'"

13 **A I just said that. I'm on point.**

14 Q The next paragraph says, "The more we establish
15 inXile's name with wonderful products, people will trust
16 us to do something brand new. I think I need recent
17 role-playing success to be able to build that trust."

18 Do you see that?

19 **A Yes.**

20 Q So what you're talking about there, my
21 understanding with this clarification, is that at some
22 point you would like to do original games that aren't
23 remakes of any old games?

24 **A Yeah. It's important to have a mixture.**

25 MR. THOMPSON: Could we take a five-minute

1 break?

2 MR. OINES: Sure.

3 (Recess.)

4 BY MR. THOMPSON:

5 Q Mr. Fargo, I just have a few more questions for
6 you and then we'll wrap up here today.

7 A Okay.

8 Q Over the course of our time today you've talked
9 about some games that inXile has worked on where inXile
10 has procured the ability to use certain names through
11 license agreements.

12 A Uh-huh.

13 Q Generally speaking, do you recall that
14 discussion?

15 A Yes.

16 Q Would inXile be willing to enter into a license
17 agreement with Steve Jackson Games for the name
18 "Autoduel"?

19 MR. OINES: I just want to object. Calls for
20 speculation. Incomplete hypothetical. And frankly, I
21 don't think it's proper to try and have some sort of
22 discussion like that on the record.

23 But, I mean, you can answer the question, if
24 you want. But I think it's an incomplete hypothetical.

25 THE WITNESS: I wouldn't enter in a license

ERRATA SHEET

CORRECTIONS:

	Pg.	Ln.	Now Reads	Should Read	Reasons Therefor
1					
2					
3					
4					
5	20	11	NBK	MDK	Transcribed incorrectly
6	20	15	Syberia	Cyberia	" "
7	22	15	Chest	Chess	" "
8	48	8	fray	free	" "
9	124	5	office	audience	" "
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24	Deponent's Signature			Date 10/27/16	
25					

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9 I, FRANK BRIAN FARGO, do hereby declare under
10 penalty of perjury that I have read the foregoing
11 transcript; that I have made any corrections as they
12 appear on the errata sheet, which is signed by me; that
13 my corrected testimony as contained herein is true and
14 correct.

15 EXECUTED this 27th day of October,
16 2016, at Newport Beach CA
(City) (State)

17
18
19
20 FRANK BRIAN FARGO
21
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25

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand which
8 was thereafter transcribed under my direction; that the
9 foregoing transcript is a true record of the testimony
10 given.

11 Further, that if the foregoing pertains to the
12 original transcript of a deposition in a Federal Case,
13 before completion of the proceedings, review of the
14 transcript [X] was [] was not requested.

15 I further certify I am neither financially
16 interested in the action, nor a relative or employee of
17 any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed
19 my name.

20 Dated: September 22, 2016

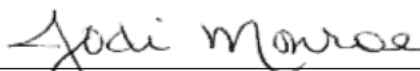
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JODI MONROE, RPR, CLR
CSR No. 13010



The dismantling of transcript will void Reporter's
Certificate.

EXHIBIT 44

Declaration of Brandon M. Ress

**REDACTED - CONTAINS ATTORNEY'S EYES
ONLY INFORMATION**

EXHIBIT 45

Declaration of Brandon M. Ress

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEVE JACKSON GAMES,)	Opposition No.
INCORPORATED,)	91225722
)	
Opposer,)	Serial No. 86/702,458
)	
vs.)	
)	
INXILE ENTERTAINMENT, INC.,)	
)	
Applicant.)	
_____)	

DEPOSITION OF MICHAEL "MAXX" KAUFMAN

Costa Mesa, California

Monday, September 12, 2016

Reported by:
JODI MONROE, RPR, CLR
CSR No. 13010
JOB No. 10224X

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3
4 STEVE JACKSON GAMES,)
 INCORPORATED,)
5)
) Opposition No.
) 91225722
6)
) Serial No. 86/702,458
)
 vs.)
7)
 INXILE ENTERTAINMENT, INC.,)
8)
) Applicant.
9)
 _____)

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Deposition of MICHAEL "MAXX" KAUFMAN,
taken on behalf of Opposer, at 611 Anton
Boulevard, 14th Floor, Costa Mesa, California,
beginning at 1:08 p.m. and ending at 3:53 p.m.
on Monday, September 12, 2016, before
JODI MONROE, RPR, CLR, Certified Shorthand
Reporter No. 13010.

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19 Exhibit 44 Article dated May 16, 2013,
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21 Exhibit 45 Article dated May 17, 2013, by
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1 Costa Mesa, California, Monday, September 12, 2016

2 1:08 p.m. - 3:53 p.m.

3 -oOo-

4 THE REPORTER: Pursuant to the Federal Rules of
5 Civil Procedure, I am required to state the following:
6 My name is Jodi Monroe. My business address is 801
7 North Parkcenter Drive, Suite 107, Santa Ana, California
8 92705. This is the deposition of Maxx Kaufman in the
9 matter of Steve Jackson Games, Incorporated versus
10 inXile Entertainment, Inc., beginning at 1:08 p.m., on
11 Monday, September 12, 2016. This deposition is taking
12 place at Rutan & Tucker, 611 Anton Boulevard, 14th
13 Floor, Costa Mesa, California.

14 Counsel, will you please state your appearances
15 for the record.

16 MR. THOMPSON: Brad Thompson on behalf of Steve
17 Jackson Games.

18 MR. OINES: Ron Oines for inXile.

19 -oOo-

20 MICHAEL "MAXX" KAUFMAN,
21 having been first duly sworn, was examined and testified
22 as follows:

23 -oOo-

24 EXAMINATION

25 BY MR. THOMPSON:

1 Q Good afternoon, Mr. Kaufman. Have you ever
2 given a deposition before?

3 A I have not.

4 Q Let me just kind of lay out some of the -- the
5 process of how it works, and I'm sure maybe you've had a
6 chance to speak with your counsel about it. But in
7 short, I'm going to ask some questions. You do your
8 best to let me finish my question. I'll do my best to
9 let you finish your answer so that Ms. Monroe here has a
10 chance to fully get my question and fully get your
11 answer.

12 We'll take breaks whenever you need them. I'll
13 try to keep an eye on the clock and make sure we at
14 least take one every hour. But if you'd like to take
15 one before then, no problem. The only thing I ask is
16 that if I've asked you a question and there's a question
17 pending, that you at least answer that question before
18 we take a break.

19 Does that sound fair?

20 A Yes.

21 Q The other thing that sometimes can be difficult
22 in depositions is the tendency to nod the head yes or no
23 instead of giving a verbal response. Of course, again,
24 for the court reporter's benefit, we need a verbal
25 response to all of the questions.

1 The other thing that wouldn't come through very
2 well is uh-huh, huh-uh, for answers. So try to -- if
3 there's a yes or a no, try to give those answers as
4 opposed to just nodding your head. And I'll try to help
5 watch those as well.

6 Okay?

7 A Yep.

8 Q Could you state your full name and address just
9 for the record.

10 A Michael Kaufman. My address is 480 East 19th
11 Street, Costa Mesa, California.

12 Q Generally speaking, though, you go by Maxx as
13 your first name?

14 A I go my Maxx.

15 Q Did you bring any documents with you to today's
16 deposition?

17 A No.

18 Q What did you do to prepare for today's
19 deposition?

20 A Talked to the lawyer this morning.

21 Q And without divulging the nature of those
22 communications, approximately how long did you meet with
23 Mr. Oines this morning?

24 A Hour and a half.

25 Q You have not given a deposition before; is that

1 correct?

2 A I have not.

3 Q Have you ever testified in a trial or a
4 proceeding?

5 A I have not.

6 Q Let's talk a little bit about your background.

7 A Okay.

8 Q Starting with any college education you may
9 have done after high school. So can we kind of start
10 there and then walk through your education and
11 employment history?

12 A Sure. Are you going to ask the questions or do
13 you want me to just go through it?

14 Q Sure. There's two ways we can do it. I'm
15 happy to just ask question after question. Sometimes
16 it's faster if I ask you to kind of walk us through your
17 history.

18 A Okay. I went to Syracuse University, got a
19 bachelor's in industrial design. After school I came
20 out to California. I worked in New Jersey for a little
21 while.

22 Q When did you graduate from Syracuse?

23 A '91. Came out to California, worked doing
24 product design at Image Design & Consulting in
25 El Segundo. Worked in the movies for a little while for

1 a bunch of different companies. And then I started in
2 video games at a company called Xatrix.

3 Q How do you spell that?

4 A X-a-t-r-i-x.

5 Q So let's go back just to kind of put a timeline
6 on some of that. You said you came out to California,
7 you did some image design consulting. Do you remember
8 the name of the company you did that for?

9 A That it was it, it was called the Image Design,
10 and that was '92 to '93.

11 Q And then after '92 to '93 for Image Design
12 Consulting, you said you went and worked in the movies.
13 Who did you work for there?

14 A I worked for a company called Greg Gene,
15 Incorporated.

16 Q Was that in '93 or '94?

17 A Yeah, I don't know. '94.

18 Q Ish?

19 A 94-ish, something like that.

20 Q What did you do for Greg Gene, Inc.?

21 A I worked on Stargate. I don't even know if I
22 was actually an employee of his or an employee of
23 Stargate. I think I was an employee of Stargate
24 Productions, which was a movie, which they formed
25 companies to pay the team, basically.

1 Q What were you doing on --

2 A Special effects, model making.

3 Q Were you doing the same thing for Image Design
4 Consulting?

5 A No, I was doing product design.

6 Q What type of products?

7 A Oh, wow. Barbie displays and Rain Bird water
8 sprinkler stuff, design stuff.

9 Q Is that like marketing design stuff or actual
10 product?

11 A Actual product design. That's what I went to
12 school for, product design. And then I worked for
13 Stuart Karten for a little while. It was more contract
14 work, and that was, like, Atlantic Towers and some other
15 types of products.

16 Q When was that?

17 A That was in between, like, Image and the movie
18 stuff.

19 Q So jumping up to your time working either as an
20 employee of, or on behalf of, Stargate Productions in
21 the mid-'90s. You said you then went to Xatrix?

22 A Yes.

23 Q Do you recall approximately when you went to
24 Xatrix?

25 A '95, '96. I don't recall. I don't recall the

1 exact years.

2 Q Mid-'90s?

3 A Mid-'90s.

4 Q What did you do for Xatrix?

5 A First I was an artist.

6 Q What type of artist, like graphic design or...

7 A No, like 3-D and texture artist.

8 Q Doing artwork for video games?

9 A Uh-huh.

10 Q Do you recall some of the games that you did
11 artwork for?

12 A Well, as an artist, I worked on Syberia II.

13 Q Did you have another position at Xatrix, other
14 than artist?

15 A Art director.

16 Q Approximately when did you become an art
17 director?

18 A I don't know, '97, '98. Mid-'90s.

19 Q So after you'd been there for a couple of years
20 as an artist, at some point you were promoted to an art
21 director?

22 A Uh-huh.

23 Q What did you do as an art director?

24 A Art director on Redneck Rampage and Kingpin,
25 and an add-on pack called Scourge of Armagon for

1 Quake II.

2 Q Are those video games?

3 A Yes.

4 Q Are they all role-playing games?

5 A No, they're all first-person shooters, FPS.

6 Q What do you mean by that?

7 A First-person shooter is like Call of Duty where
8 you go around from the perspective of the character or
9 from your perspective looking into the game and moving
10 around. Call of Duty is probably the biggest
11 first-person shooter.

12 Q Or when I was in college, it was GoldenEye.

13 A Yes, GoldenEye was big, because it was console.

14 Q So for any other games while you were art
15 director, other than Redneck Rampage, Kingpin, Scourge
16 of Armagon, that you can recall?

17 A Not at Xatrix.

18 Q Did you do anything else, other as artist and
19 art director, while you were at Xatrix?

20 A No, that was it.

21 Q What did you do after your time at Xatrix?

22 A Then Xatrix reformed as Gray Matter Studios.

23 Q G-r-e-y?

24 A I think so -- G-r-a-y.

25 Q What was Gray Matter Studios?

1 A For Gray Matter we worked on Wolfenstein 3-D,
2 or Return to Castle Wolfenstein.

3 Q Return...

4 A Return to Castle Wolfenstein.

5 Q Can you describe that game?

6 A It's a first-person shooter, similar to the
7 other three.

8 Q Was there an original Wolfenstein game?

9 A Yes, there was.

10 Q So Return To was some kind of the sequel to
11 that?

12 A Right.

13 Q What was your position at Gray Matter Studios?
14 Was it still art director?

15 A Art director.

16 Q So the company -- I guess I'm not sure how that
17 characterize it -- changed its name.

18 A Yeah, we basically reformed the company.

19 Q So you continued to do the same general duties
20 that you were doing at Xatrix, but at this time you were
21 doing it on behalf of Gray Matter Studios?

22 A Right.

23 Q Do you recall approximately when that
24 reformation of Xatrix into Gray Matter took place?

25 A '99.

1 Q Late '90s sometime?

2 A Late '90s.

3 Q Any other games that you worked on at Gray
4 Matter Studios?

5 A I worked on another name called Trinity, but it
6 never was released.

7 Q What kind of game was Trinity?

8 A First-person shooter.

9 Q Why wasn't it released?

10 A Well, I don't know exactly. I had left the
11 company in the middle of the project. Gray Matter got
12 acquired by Activision.

13 Q Did you leave after it was acquired?

14 A I left after, yes.

15 Q So after the acquisition of Gray Matter by
16 Activision where did you go?

17 A I went to inXile Entertainment.

18 Q And when was that?

19 A 2002, 2003. I think 2003. Early 2000s.

20 Q What was your role in that time frame at
21 inXile?

22 A Art director.

23 Q Did you help form the company or was it already
24 in existence?

25 A The company was already in existence, to my

1 knowledge, but I started when we first got the building.

2 Q Who all was at inXile Entertainment when you
3 first started?

4 A Brian.

5 Q Mr. Fargo?

6 A Mr. Fargo, yes. Matt Findley and
7 Elene Campbell.

8 Q Brian Fargo, Matt Findley and who?

9 A Elene Campbell.

10 Q How do you spell that; if you know?

11 A E-l-e-n-a, or e. Campbell, C-a-m-p-b-e-l-l.

12 Q Were these the initial individuals that were a
13 part of inXile when it was formed?

14 A Can you say that again?

15 Q Sure. Were these the initial employees of
16 inXile Entertainment when the company was formed?

17 A Yes, as far as I know.

18 Q So we'll obviously come back and talk some more
19 about inXile. I just want to make sure I have any other
20 work history before we move on.

21 Have you done anything, other than inXile,
22 since you joined them in 2002, 2003?

23 A Yes, I left inXile -- I don't know -- nine
24 years -- after I had been there for nine years I had
25 left inXile. There was a large layoff at inXile.

1 Q You were one of the people who were laid off?

2 A Uh-huh.

3 Q Where did you go when you were laid off?

4 A I started forming my own company, Gaimfu.

5 Q Is that spelled G-a-m-e-f-u?

6 A G-a-i-m-f-u.

7 Q Gaimfu, all one word?

8 A Yeah.

9 Q So it's not two words?

10 A Just one word.

11 Q When did you form Gaimfu?

12 A I don't know, 2010, 2011, 2012. I don't know,
13 probably 2011. I'm not sure of the exact date.

14 Q Okay.

15 A Somewhere in that area.

16 Q And what was Gaimfu formed to do?

17 A We were doing a mobile game.

18 Q What mobile games were you working on?

19 A It was just really one mobile game that we were
20 working on. That was for Saban Entertainment.

21 Q What was the name of the game?

22 A Paul Frank Golf.

23 Q Paul Frank Golf?

24 A I think so, something like that.

25 Q Any other games?

1 A No, that's it.

2 Q Was that a sports game, I take it?

3 A It was like a little mobile game, like using
4 your finger to flick the golf ball.

5 Q Any other games that you've helped develop at
6 Gaimfu?

7 A Well, I also worked with another company in
8 Bangkok called Sandbox Global, and they were working on
9 a game that was a social game called Fashionista.

10 Q So did you partner with them or were you an
11 employee of theirs? How did that work?

12 A It was, like, contracted through Gaimfu,
13 working with them.

14 Q Any other games that you worked with Sandbox
15 on, other than Fashionista?

16 A No. Well, yeah, I guess so. There was some
17 other game that was in development.

18 Q What was the name of that other game in
19 development?

20 A I don't think it really had a name. It was
21 kind of in development.

22 Q What was the concept of the game?

23 A It was like a dancing panda.

24 Q I don't think I asked you this earlier: What
25 was the concept of the Fashionista social game?

1 A A fashion game.

2 Q In what sense?

3 A You would kind of go around and you could dress
4 up your avatar and you could gain points by doing
5 certain things in the game to then get more outfits, and
6 it's geared towards girls and fashion.

7 Q And you worked with Sandbox Global at the same
8 time, or in parallel, while you were at Gaimfu?

9 A Uh-huh.

10 Q Is that a "yes"?

11 A Yes.

12 Q What else have you done, other than Gaimfu and
13 work with Sandbox Global?

14 A Then there was Pixelbionic.

15 Q Is that a company you formed?

16 A Yeah, that was a company I forged with
17 Mike Arkin.

18 Q Do you recall approximately when you formed
19 Pixelbionic?

20 A 2012, 2013, something like that.

21 Q Would it have been after you formed Gaimfu?

22 A Oh, yeah, it was after.

23 Q Did you have a title at Pixelbionic?

24 A CEO.

25 Q What was Mr. Arkin's title?

1 A President. It was just the two of us, though.

2 Q So you guys were the cofounders of Pixelbionic?

3 A Right.

4 Q What was Pixelbionic formed for?

5 A To do a Kickstarter.

6 Q Kickstarter is a crowd-sourced funding
7 campaign?

8 A Yes.

9 Q What is the Kickstarter campaign that you
10 formed Pixelbionic to do?

11 A Well, ultimately it became -- it was called
12 MotorGun.

13 Q When you say "ultimately it became MotorGun,"
14 what was it before it became MotorGun?

15 A Autoduel.

16 Q That's spelled A-u-t-o-d-u-e-l, correct?

17 A Yes.

18 Q What was the game that you formed Pixelbionic
19 going to be, originally called Autoduel and eventually
20 became MotorGun? Can you describe that game?

21 A Yes, it was a multiplayer player-versus-player,
22 PVP, car combat game.

23 Q Can you describe the setting of the car combat
24 game?

25 A Post-apocalyptic.

1 Q Why did you call it that, initially, Autoduel?

2 A Because we thought it was a good name. It
3 described -- I was just going to say it described what
4 was happening in the game.

5 Q Were you aware at that time that there was an
6 Autoduel game that had been put out by Steve Jackson
7 Games earlier?

8 A We were aware of the name and the game that was
9 put out by Origin Systems.

10 Q So you were aware of the previous game you said
11 that was put out by Origin Systems?

12 A I think so, yeah.

13 Q Did you have any knowledge at that time whether
14 or not Origin Systems had a license from Steve Jackson
15 Games to use that name "Autoduel"?

16 A I think we knew that Steve Jackson was
17 involved.

18 Q At this time, when you were at Pixelbionic, did
19 you ever have any discussions with anyone at Steve
20 Jackson Games about your intent to use the name
21 "Autoduel" for this game?

22 A We had discussions with Steve Jackson Games
23 after we had put out the press for Autoduel.

24 Q What discussions did you have?

25 A At first we had a discussion about some kind of

1 partnership or working together.

2 Q Who did you speak with at Steve Jackson Games?

3 A We spoke with Steve, and I'm not sure who else
4 was in the conversation. I recall that there might have
5 been one or two other people, but I don't remember who
6 it was.

7 Q When you refer to "Steve," you mean --

8 A Steve Jackson.

9 Q So initially did they contact you or did you
10 contact them; if you recall?

11 A I don't recall. I didn't actually do the
12 correspondence. Mike Arkin did, so...

13 Q So initially you had some discussions about a
14 potential partnership with Steve Jackson Games. Did
15 that ever materialize?

16 A In the conversation that I recall, he -- or we
17 discussed it back and forth and he said, "Okay, well,
18 let me see what you guys are doing." And then we sent
19 him some information on the game, the type of game that
20 we were making, and that was -- that was the extent of
21 it.

22 Q Did Pixelbionic and Steve Jackson Games
23 ultimately enter into any kind of a partnership for use
24 of Autoduel?

25 A No.

1 Q And why not?

2 A Steve Jackson said he wanted to keep it.

3 Q Meaning, he wanted to keep the Autoduel name?

4 A Yeah. I assume, yes.

5 Q Had Pixelbionic filed anything with the
6 trademark office trying to use the Autoduel name?

7 A No.

8 Q Had any other group filed for use of that name
9 around the same time?

10 A Yes.

11 Q Who was that?

12 A Big Boat Interactive.

13 Q Who was Big Boat Interactive?

14 A That is Mike Arkin's company.

15 Q What was the relationship between Pixelbionic
16 and Big Boat Interactive?

17 A There was no relationship, except that me and
18 Mike Arkin were working together.

19 Q In your working together at Pixelbionic, did
20 you come to learn that Big Boat Interactive had filed a
21 trademark application seeking to use the name
22 "Autoduel"?

23 A Yes.

24 Q Did you ever review any of those filings?

25 A No.

1 Q Did you have any involvement in any of the
2 processes that took place between either Big Boat
3 Interactive or Steve Jackson Games with respect to the
4 trademark filings?

5 A No.

6 Q But ultimately you know that there was no
7 agreement reached between the parties, correct?

8 A There were phone conversations between -- you
9 know, like I said before.

10 Q But no agreement to allow either Pixelbionic or
11 Big Boat Interactive to use the name "Autoduel" for this
12 game that you were developing?

13 MR. OINES: Objection. Lacks foundation.

14 BY MR. THOMPSON:

15 Q Do you understand my question?

16 A Just repeat it, please.

17 Q Sure. Are you aware of any agreement that was
18 reached between Steve Jackson Games and either
19 Pixelbionic or Big Boat Interactive about use of the
20 name "Autoduel"?

21 A There was no agreement, yeah.

22 Q And then ultimately Pixelbionic decided to
23 change the name of that game, correct?

24 A That's correct.

25 Q What did you change the name too?

1 A MotorGun.

2 Q Why did you change the name to MotorGun?

3 A Because we didn't want to fight for the
4 trademark.

5 Q Was it your understanding that Steve Jackson
6 Games asserted rights to that trademark?

7 A No, it was more that he said that he would
8 fight us if we --

9 Q Meaning, fight you to keep the trademark?

10 MR. OINES: Objection. Lacks foundation.

11 THE WITNESS: I don't know. I guess just to
12 get the trademark.

13 BY MR. THOMPSON:

14 Q Did you already have the trademark?

15 MR. OINES: Objection. Vague.

16 BY MR. THOMPSON:

17 Q You said you didn't have involvement in the
18 trademark?

19 A Right, I don't know the status of the trademark
20 or what our -- all I know is that Mike filed for it.

21 Q So you knew Mr. Arkin had filed for it?

22 A Yes, correct.

23 Q And you knew that Steve Jackson Games was
24 opposed to that request?

25 A Yes.

1 Q And ultimately, as a result of that discussion,
2 you guys just decided to change the name from Autoduel
3 to MotorGun?

4 A Yes.

5 Q Jumping back to your -- well, let's continue.
6 So you formed Pixelbionic for the purpose of this game
7 called Autoduel, which you then changed to MotorGun.
8 Did that project come to fruition?

9 A No.

10 Q Why did it not go through?

11 A It did not fund.

12 Q Meaning, your Kickstarter campaign --

13 A Our Kickstarter crowd funding did not fund
14 sufficiently, so we canceled the project.

15 Q Did Pixelbionic attempt to do any other games
16 under the name Pixelbionic?

17 A No.

18 Q So other than that game, were there any other
19 games that you worked on while at Pixelbionic?

20 A No.

21 Q What did you do after the decision to close the
22 Kickstarter campaign for MotorGun?

23 A I ended up going back to inXile.

24 Q Approximately when did you go back to inXile?

25 A 2014, approximately.

1 Q And when you returned to inXile, what was your
2 title?

3 A Art director.

4 Q Which is the same title you had before when you
5 were at inXile?

6 A At inXile I've had different titles, art
7 director and creative director.

8 Q What's your title today at inXile?

9 A Art director.

10 Q Do you recall approximately what month in 2014
11 you went back to inXile?

12 A Maybe August. I don't know. I don't recall
13 whether it was 2014 or 2013. I think it was 2014.

14 Q Do you recall generally, it was the summer of
15 either '13 or '14?

16 A Yeah, it was summer. August, I believe.

17 MR. THOMPSON: I have a document that could
18 help us with the dates. I'm going to hand you,
19 Mr. Kaufman, what I'm marking as Exhibit Number 38.

20 Ron, I believe the last exhibit we used was 37,
21 so I'm just continuing on.

22 (Deposition Exhibit 38 was marked for
23 identification by the court reporter.)

24 BY MR. THOMPSON:

25 Q Take a look at that. Can you identify what

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I, MICHAEL "MAXX" KAUFMAN, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as they appear on the errata sheet, which is signed by me; that my corrected testimony as contained herein is true and correct.

EXECUTED this 27 day of October,
2016, at Newport Beach, California.
(City) (State)

Michael Kaufman
MICHAEL "MAXX" KAUFMAN

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand which
8 was thereafter transcribed under my direction; that the
9 foregoing transcript is a true record of the testimony
10 given.

11 Further, that if the foregoing pertains to the
12 original transcript of a deposition in a Federal Case,
13 before completion of the proceedings, review of the
14 transcript [X] was [] was not requested.

15 I further certify I am neither financially
16 interested in the action, nor a relative or employee of
17 any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed
19 my name.

20 Dated: September 22, 2016

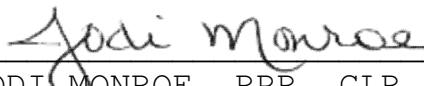
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JODI MONROE, RPR, CLR
CSR No. 13010



The dismantling of transcript will void Reporter's
Certificate.

EXHIBIT 46

Declaration of Brandon M. Ress

**REDACTED - CONTAINS ATTORNEY'S EYES
ONLY INFORMATION**

EXHIBIT 47

Declaration of Brandon M. Ress

Generated on: This page was generated by TSDR on 2016-11-09 20:01:24 EST

Mark: AUTODUEL

AUTODUEL

US Serial Number: 86806802

Application Filing Date: Nov. 02, 2015

Register: Principal

Mark Type: Trademark

Status: Suspension check completed. Application remains suspended.

Status Date: Aug. 31, 2016

Mark Information

Mark Literal Elements: AUTODUEL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: Yes

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Steve Jackson Games Incorporated

Owner Address: P.O. Box 18957
Austin, TEXAS 78760
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: TEXAS

Attorney/Correspondence Information

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Correspondent

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**Correspondent e-
mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 12, 2016	ATTORNEY REVOKED AND/OR APPOINTED	
Sep. 12, 2016	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Aug. 31, 2016	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	66213
Aug. 31, 2016	ASSIGNED TO LIE	66213
Feb. 25, 2016	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Feb. 25, 2016	LETTER OF SUSPENSION E-MAILED	6332
Feb. 25, 2016	SUSPENSION LETTER WRITTEN	92826
Feb. 24, 2016	ASSIGNED TO EXAMINER	92826
Nov. 06, 2015	NOTICE OF PSEUDO MARK E-MAILED	
Nov. 05, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 05, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: GALLERY, TIMOTHY JOHN

**Law Office
Assigned:** LAW OFFICE 121

File Location

Current Location: TMO LAW OFFICE 121

Date in Location: Aug. 31, 2016

Proceedings

Summary

**Number of
Proceedings:** 1

Type of Proceeding: Opposition

**Proceeding
Number:** [91225722](#)

Filing Date: Jan 07, 2016

Status: Pending

Status Date: Jan 07, 2016

**Interlocutory
Attorney:** YONG OH (RICHARD) KIM

Defendant

Name: inXile Entertainment, Inc.

**Correspondent
Address:** LINDSAY J. HULLEY
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611 ANTON BLVD FL 14
COSTA MESA CA , 92626-7681
UNITED STATES

**Correspondent e-
mail:** trademarks@rutan.com , roines@rutan.com , aspielman@rutan.com , lhulley@rutan.com

Associated marks

Serial

Registration

Mark	Application Status	Number	Number
AUTODUEL	Opposition Pending	86702458	
Plaintiff(s)			

Name: Steve Jackson Games Incorporated

Correspondent Address: Richard J. Groos
King & Spalding LLP
401 CONGRESS AVENUE, SUITE 3200
AUSTIN TX , 78701
UNITED STATES

Correspondent e-mail: aotrademark@kslaw.com , rgroos@kslaw.com , jhaddock@kslaw.com , kpfertner@kslaw.com , bress@kslaw.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
AUTODUEL	Report Completed Suspension Check - Case Still Suspended	86806802	

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jan 07, 2016	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jan 07, 2016	Feb 16, 2016
3	PENDING, INSTITUTED	Jan 07, 2016	
4	ANSWER	Feb 11, 2016	
5	P MOT TO AMEND PLEADING/AMENDED PLEADING	Oct 28, 2016	

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86806802
LAW OFFICE ASSIGNED	LAW OFFICE 121
MARK SECTION	
MARK	AUTODUEL
NEW ATTORNEY ADDRESS	
STATEMENT TEXT	By submission of this request, the undersigned hereby APPOINTS the following new attorney:
NAME	Richard J. Groos
FIRM NAME	King & Spalding LLP
STREET	401 Congress Avenue, Suite 3200
CITY	Austin
STATE	Texas
COUNTRY	United States
POSTAL/ZIP CODE	78701
PHONE	512.457.2018
FAX	512.457.2100
EMAIL	aotrademark@kslaw.com
ATTORNEY AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
NEW OTHER APPOINTED ATTORNEYS	Sheri M. Hunter, Brandon M. Ress, Kristine Waddell and any other attorneys with the law firm
NEW CORRESPONDENCE ADDRESS	
NAME	Richard J. Groos
FIRM NAME	King & Spalding LLP
STREET	401 Congress Avenue, Suite 3200
CITY	Austin
STATE	Texas
COUNTRY	United States
POSTAL/ZIP CODE	78701
PHONE	512.457.2018
FAX	512.457.2100

EMAIL	aotrademark@kslaw.com;emolson@kslaw.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
INDIVIDUAL ATTORNEY DOCKET/REFERENCE NUMBER	
OTHER APPOINTED ATTORNEY	Sheri M. Hunter, Brandon M. Ress, Kristine Waddell and any other attorneys with the law firm
SIGNATURE SECTION	
SIGNATURE	/Philip J Reed/
SIGNATORY NAME	Philip J Reed
SIGNATORY DATE	09/12/2016
SIGNATORY POSITION	CEO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Sep 12 16:28:38 EDT 2016
TEAS STAMP	USPTO/RAA-XX.XX.XXX.XXX-2 0160912162838714832-87058 520-55019f142e3a393a5e332 6a7dab34865fc6a09f901365a 9162781febf36eaa31d6-N/A- N/A-20160902113113792836

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

To the Commissioner for Trademarks:

MARK: AUTODUEL

SERIAL NUMBER: 86806802

Original Correspondence Address :

STEVE JACKSON GAMES INCORPORATED

STEVE JACKSON GAMES INCORPORATED

P.O. BOX 18957

AUSTIN Texas 78760

US

512-447-7866

512-447-1144

elisabeth@sjgames.com;sj@sjgames.com

By submission of this request, the undersigned hereby APPOINTS the following new attorney: In addition, any additional previously-appointed attorneys that are currently listed in the application are replaced with the new "Other Appointed Attorneys" listed below.

Newly Appointed Attorney:

Richard J. Groos

King & Spalding LLP

401 Congress Avenue, Suite 3200

Austin, Texas 78701

United States

512.457.2018

512.457.2100

aotrademark@kslaw.com

Other Appointed Attorneys:

Sheri M. Hunter, Brandon M. Ress, Kristine Waddell and any other attorneys with the law firm

The following is to be used as the correspondence address:

Richard J. Groos

King & Spalding LLP

401 Congress Avenue, Suite 3200

Austin, Texas 78701

United States

512.457.2018

512.457.2100

aotrademark@kslaw.com;emolson@kslaw.com

Signature: /Philip J Reed/ Date: 09/12/2016

Signatory's Name: Philip J Reed

Signatory's Position: CEO

Serial Number: 86806802

Internet Transmission Date: Mon Sep 12 16:28:38 EDT 2016

TEAS Stamp: USPTO/RAA-XX.XX.XXX.XXX-2016091216283871

4832-87058520-55019f142e3a393a5e3326a7da

b34865fc6a09f901365a9162781febf36eaa31d6
-N/A-N/A-20160902113113792836

To: Steve Jackson Games Incorporated (elisabeth@sjgames.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86806802 - AUTODUEL - N/A
Sent: 2/25/2016 8:59:11 AM
Sent As: ECOM121@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86806802

MARK: AUTODUEL

86806802

CORRESPONDENT ADDRESS:

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
P.O. BOX 18957
AUSTIN, TX 78760

**GENERAL TRADEMARK
INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Steve Jackson Games Incorporated

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

elisabeth@sjgames.com

SUSPENSION NOTICE: NO RESPONSE NEEDED

ISSUE/MAILING DATE: 2/25/2016

The trademark examining attorney is suspending action on the application for the reason stated below. *See* 37 C.F.R. §2.67; TMEP §§716 *et seq.*

PRIOR-FILED PENDING APPLICATION(S) FOUND: The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant's mark.

The effective filing date of the pending application identified below precedes the filing date of applicant's application. If the mark in the referenced application registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, action on this application is suspended until the earlier-filed referenced application is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application is attached.

- Application Serial No. 86702458

The USPTO will periodically conduct a status check of the application to determine whether suspension remains appropriate, and the trademark examining attorney will issue as needed an inquiry letter to applicant regarding the status of the matter on which suspension is based. TMEP §§716.04, 716.05. Applicant will be notified when suspension is no longer appropriate. *See* TMEP §716.04.

No response to this notice is necessary; however, if applicant wants to respond, applicant should use the "Response to Suspension Inquiry or Letter of Suspension" form online at <http://teasroa.uspto.gov/rsi/rsi>.

/Timothy J. Callery/
Timothy J. Callery
Examining Attorney
Law Office 121
(571) 270-1987
tim.callery@uspto.gov

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Feb 24, 2016

86702458

DESIGN MARK

Serial Number

86702458

Status

OPPOSITION PENDING

Word Mark

AUTODUEL

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

inXile Entertainment, Inc. CORPORATION DELAWARE Suite 100 2727 Newport Blvd. Newport Beach CALIFORNIA 92663

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Providing online downloadable computer and video game programs;
Interactive video game programs.

Filing Date

2015/07/23

Examining Attorney

TIERNEY MARGERY ANN

Attorney of Record

Lindsay J. Hulley

AUTODUEL

To: Steve Jackson Games Incorporated (elisabeth@sjgames.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86806802 - AUTODUEL - N/A
Sent: 2/25/2016 8:59:11 AM
Sent As: ECOM121@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **2/25/2016** FOR U.S. APPLICATION SERIAL NO.86806802

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

*** User:tcallery ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	86806802[SN]
02	6858	N/A	0	0	0:02	*auto*[bi,ti] not dead[ld]
03	20791	N/A	0	0	0:02	*d{"oue"1:2}l*[bi,ti] not dead[ld]
04	55	0	55	51	0:01	2 and 3
05	4239	N/A	0	0	0:02	2 and "009"[cc]
06	3540	N/A	0	0	0:01	2 and ("009" "035" "042" a b 200)[ic] not dead[ld]
07	2174	N/A	0	0	0:01	2 and ("009" "042" a b 200)[ic] not dead[ld]
08	1596	N/A	0	0	0:02	2 and ("009" a b 200)[ic] not dead[ld]
09	6792	N/A	0	0	0:02	auto*[bi,ti] not dead[ld]
10	3750	N/A	0	0	0:02	auto[bi,ti] not dead[ld]
11	2188	N/A	0	0	0:01	10 and "009"[cc]
12	1832	N/A	0	0	0:02	10 and ("009" "035" "042" a b 200)[ic] not dead[ld]
13	997	N/A	0	0	0:01	10 and ("009" "042" a b 200)[ic] not dead[ld]
14	769	N/A	0	0	0:01	10 and ("009" a b 200)[ic] not dead[ld]
15	9739	N/A	0	0	0:02	3 and "009"[cc]
16	6214	N/A	0	0	0:02	3 and ("009" "035" "042" a b 200)[ic] not dead[ld]
17	3709	N/A	0	0	0:02	3 and ("009" "042" a b 200)[ic] not dead[ld]
18	2359	N/A	0	0	0:02	3 and ("009" a b 200)[ic] not dead[ld]
19	3654	N/A	0	0	0:02	*d{"oue"1:2}l[bi,ti] not dead[ld]
20	1720	N/A	0	0	0:02	19 and "009"[cc]
21	949	N/A	0	0	0:02	19 and ("009" "035" "042" a b 200)[ic] not dead[ld]
22	603	N/A	0	0	0:02	19 and ("009" "042" a b 200)[ic] not dead[ld]
23	419	0	419	371	0:01	19 and ("009" a b 200)[ic] not dead[ld]
24	5	3	2	2	0:01	"autoduel"[bi,ti]
25	76	45	31	22	0:01	"steve jackson games"[ow]

Session started 2/24/2016 2:55:04 PM

Session finished 2/24/2016 3:15:57 PM

Total search duration 0 minutes 40 seconds

Session duration 20 minutes 53 seconds

Defaut NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 86806802

From: TMDesignCodeComments
Sent: Friday, November 6, 2015 00:22 AM
To: elisabeth@sjgames.com
Cc: sj@sjgames.com
Subject: Official USPTO Notice of Pseudo Mark: U.S. Trademark SN: 86806802: AUTODUEL

Docket/Reference Number:

The USPTO may assign pseudo marks, as appropriate, to new applications to assist in searching the USPTO database for conflicting marks. They have no legal significance and will not appear on the registration certificate.

A PSEUDO MARK may be assigned to marks that include words, numbers, compound words, symbols, or acronyms that can have alternative spellings or meanings. For example, if the mark comprises the words 'YOU ARE' surrounded by a design of a box, the pseudo mark field in the USPTO database would display the mark as 'YOU ARE SQUARE'. A mark filed as 'URGR8' would receive a pseudo mark of 'YOU ARE GREAT'.

Response to this notice is not required; however, to suggest additions or changes to the pseudo mark assigned to your mark, please e-mail TMDesignCodeComments@USPTO.GOV. You **must** reference your application serial number within your request. The USPTO will review the proposal and update the record, if appropriate. For questions, please call 1-800-786-9199 to speak to a Customer Service representative.

The USPTO will not send any further response to your e-mail. Check TESS in approximately two weeks to see if the requested changes have been entered. Requests deemed unnecessary or inappropriate will not be entered.

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=86806802>. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

Pseudo marks assigned to the referenced serial number are listed below.

PSEUDO MARK:

AUTO DUEL

Trademark/Service Mark Application, Principal Register

Serial Number: 86806802

Filing Date: 11/02/2015

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86806802
MARK INFORMATION	
*MARK	AUTODUEL
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	AUTODUEL
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Steve Jackson Games Incorporated
*STREET	P.O. Box 18957
*CITY	Austin
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants)	78760
PHONE	512-447-7866
FAX	512-447-1144
EMAIL ADDRESS	elizabeth@sjgames.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Texas
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
*IDENTIFICATION	Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games
FILING BASIS	SECTION 1(b)
CORRESPONDENCE INFORMATION	

NAME	Steve Jackson Games Incorporated
FIRM NAME	Steve Jackson Games Incorporated
STREET	P.O. Box 18957
CITY	Austin
STATE	Texas
COUNTRY	United States
ZIP/POSTAL CODE	78760
PHONE	512-447-7866
FAX	512-447-1144
EMAIL ADDRESS	elisabeth@sjgames.com;sj@sjgames.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	Regular TEAS
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Elisabeth B Zakes/
SIGNATORY'S NAME	Elisabeth B Zakes
SIGNATORY'S POSITION	Trademark and Copyright Administrator
SIGNATORY'S PHONE NUMBER	512-447-7866
DATE SIGNED	11/02/2015

Trademark/Service Mark Application, Principal Register

Serial Number: 86806802

Filing Date: 11/02/2015

To the Commissioner for Trademarks:

MARK: AUTODUEL (Standard Characters, see [mark](#))

The literal element of the mark consists of AUTODUEL.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Steve Jackson Games Incorporated, a corporation of Texas, having an address of
P.O. Box 18957
Austin, Texas 78760
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Correspondence Information:

Steve Jackson Games Incorporated
Steve Jackson Games Incorporated
P.O. Box 18957
Austin, Texas 78760
512-447-7866(phone)
512-447-1144(fax)
elisabeth@sjgames.com;sj@sjgames.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Elisabeth B Zakes/ Date: 11/02/2015
Signatory's Name: Elisabeth B Zakes
Signatory's Position: Trademark and Copyright Administrator
RAM Sale Number: 86806802

RAM Accounting Date: 11/03/2015

Serial Number: 86806802

Internet Transmission Date: Mon Nov 02 15:58:46 EST 2015

TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2015110215584685

6555-86806802-5401eb90e055bce8aec8927f3a

fd5b6396cee3c22ef3fc8822c21f88b6eb7d-CC-

2605-20151102154714003193

AUTODUEL

AUTODUEL

EXHIBIT 48

Declaration of Brandon M. Ress

To: Steve Jackson Games Incorporated (elisabeth@sjgames.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86806802 - AUTODUEL - N/A
Sent: 2/25/2016 8:59:11 AM
Sent As: ECOM121@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86806802

MARK: AUTODUEL

86806802

CORRESPONDENT ADDRESS:

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
P.O. BOX 18957
AUSTIN, TX 78760

**GENERAL TRADEMARK
INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Steve Jackson Games Incorporated

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

elisabeth@sjgames.com

SUSPENSION NOTICE: NO RESPONSE NEEDED

ISSUE/MAILING DATE: 2/25/2016

The trademark examining attorney is suspending action on the application for the reason stated below. *See* 37 C.F.R. §2.67; TMEP §§716 *et seq.*

PRIOR-FILED PENDING APPLICATION(S) FOUND: The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant's mark.

The effective filing date of the pending application identified below precedes the filing date of applicant's application. If the mark in the referenced application registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, action on this application is suspended until the earlier-filed referenced application is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application is attached.

- Application Serial No. 86702458

The USPTO will periodically conduct a status check of the application to determine whether suspension remains appropriate, and the trademark examining attorney will issue as needed an inquiry letter to applicant regarding the status of the matter on which suspension is based. TMEP §§716.04, 716.05. Applicant will be notified when suspension is no longer appropriate. *See* TMEP §716.04.

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/Timothy J. Callery/
Timothy J. Callery
Examining Attorney
Law Office 121
(571) 270-1987
tim.callery@uspto.gov

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Feb 24, 2016

86702458

DESIGN MARK

Serial Number

86702458

Status

OPPOSITION PENDING

Word Mark

AUTODUEL

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

inXile Entertainment, Inc. CORPORATION DELAWARE Suite 100 2727 Newport Blvd. Newport Beach CALIFORNIA 92663

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Providing online downloadable computer and video game programs;
Interactive video game programs.

Filing Date

2015/07/23

Examining Attorney

TIERNEY MARGERY ANN

Attorney of Record

Lindsay J. Hulley

AUTODUEL

To: Steve Jackson Games Incorporated (elisabeth@sjgames.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86806802 - AUTODUEL - N/A
Sent: 2/25/2016 8:59:11 AM
Sent As: ECOM121@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

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U.S. TRADEMARK APPLICATION**

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ON **2/25/2016** FOR U.S. APPLICATION SERIAL NO.86806802

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WARNING

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

EXHIBIT 49

Declaration of Brandon M. Ress

Generated on: This page was generated by TSDR on 2016-11-09 20:00:19 EST

Mark: AUTODUEL

AUTODUEL

US Serial Number: 85940537

Application Filing Date: May 23, 2013

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



DEAD/APPLICATION/Refused/Dismissed or Invalidated

This trademark application was refused, dismissed, or invalidated by the Office and this application is no longer active.

Status: Abandoned due to incomplete response. The response did not satisfy all issues in the Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Nov. 28, 2014

Date Abandoned: Mar. 12, 2014

Mark Information

Mark Literal Elements: AUTODUEL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 06, 2005

Use in Commerce: Jan. 06, 2005

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Steve Jackson Games Incorporated

Owner Address: P.O. Box 18957

Austin, TEXAS UNITED STATES 78760

Legal Entity Type: CORPORATION

State or Country TEXAS
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Richard J. Groos

Attorney Primary Email Address: aotrademark@kslaw.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Richard J. Groos
King & Spalding LLP
401 Congress Avenue, Suite 3200
Austin, TEXAS UNITED STATES 78701

Phone: 512.457.2018

Fax: 512.457.2100

Correspondent e-mail: aotrademark@kslaw.com emolson@kslaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 12, 2016	ATTORNEY REVOKED AND/OR APPOINTED	
Sep. 12, 2016	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Nov. 28, 2014	ABANDONMENT NOTICE MAILED - INCOMPLETE RESPONSE	
Nov. 28, 2014	ABANDONMENT - INCOMPLETE RESPONSE	
May 01, 2014	NOTICE OF UNRESPONSIVE AMENDMENT - MAILED	
Apr. 30, 2014	REPORT UNRESPONSIVE AMENDMENT - COMPLETED	76071
Apr. 03, 2014	NOTICE OF REVIVAL - MAILED	
Apr. 03, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Apr. 03, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Apr. 03, 2014	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 03, 2014	PETITION TO REVIVE-GRANTED	88889
Apr. 03, 2014	TEAS PETITION TO REVIVE RECEIVED	
Mar. 31, 2014	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	
Mar. 29, 2014	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	
Sep. 11, 2013	NON-FINAL ACTION MAILED	
Sep. 10, 2013	NON-FINAL ACTION WRITTEN	76071
Sep. 10, 2013	ASSIGNED TO EXAMINER	76071
Jun. 05, 2013	NOTICE OF PSEUDO MARK MAILED	
Jun. 04, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 27, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: KELLY, JOHN M

Law Office Assigned: LAW OFFICE 119

File Location

Current Location: TMO LAW OFFICE 119 - EXAMINING ATTORNEY ASSIGNED

Date in Location: Nov. 28, 2014

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Opposition**Proceeding Number:** [91212273](#)**Filing Date:** Sep 03, 2013**Status:** Terminated**Status Date:** Dec 18, 2013**Interlocutory Attorney:** ROBERT COGGINS**Defendant****Name:** Big Boat Interactive**Correspondent Address:** BIG BOAT INTERACTIVE
19328 HINSDALE AVE
TORRANCE CA UNITED STATES , 90503 1342**Correspondent e-mail:** markin@bigboatinteractive.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
AUTODUEL	Abandoned - After Inter-Partes Decision	85846846	

Plaintiff(s)**Name:** Steve Jackson Games Incorporated**Correspondent Address:** RICHARD J GROOS
FULBRIGHT JAWORSKI LLP
98 SAN JACINTO BLVD, SUITE 1100
AUSTIN TX UNITED STATES , 78701**Correspondent e-mail:** aoipdocket@nortonrosefulbright.com , sheri.hunter@nortonrosefulbright.com , kellie.pfertner@nortonrosefulbright.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
AUTODUEL	Abandoned - Incomplete Response	85940537	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Sep 03, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Sep 03, 2013	Oct 13, 2013
3	PENDING, INSTITUTED	Sep 03, 2013	
4	NOTICE OF DEFAULT	Oct 29, 2013	
5	BD DECISION: SUSTAINED	Dec 18, 2013	
6	TERMINATED	Dec 18, 2013	

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85940537
LAW OFFICE ASSIGNED	LAW OFFICE 119
MARK SECTION	
MARK	AUTODUEL
NEW ATTORNEY ADDRESS	
STATEMENT TEXT	By submission of this request, the undersigned hereby APPOINTS the following new attorney:
NAME	Richard J. Groos
FIRM NAME	King & Spalding LLP
STREET	401 Congress Avenue, Suite 3200
CITY	Austin
STATE	Texas
COUNTRY	United States
POSTAL/ZIP CODE	78701
PHONE	512.457.2018
FAX	512.457.2100
EMAIL	aotrademark@kslaw.com
ATTORNEY AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
NEW OTHER APPOINTED ATTORNEYS	Sheri M. Hunter, Brandon M. Ress, Kristine Waddell and any other attorneys with the law firm
NEW CORRESPONDENCE ADDRESS	
NAME	Richard J. Groos
FIRM NAME	King & Spalding LLP
STREET	401 Congress Avenue, Suite 3200
CITY	Austin
STATE	Texas
COUNTRY	United States
POSTAL/ZIP CODE	78701
PHONE	512.457.2018
FAX	512.457.2100

EMAIL	aotrademark@kslaw.com;emolson@kslaw.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
INDIVIDUAL ATTORNEY DOCKET/REFERENCE NUMBER	
OTHER APPOINTED ATTORNEY	Sheri M. Hunter, Brandon M. Ress, Kristine Waddell and any other attorneys with the law firm
SIGNATURE SECTION	
SIGNATURE	/Philip J Reed/
SIGNATORY NAME	Philip J Reed
SIGNATORY DATE	09/12/2016
SIGNATORY POSITION	CEO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Sep 12 16:28:38 EDT 2016
TEAS STAMP	USPTO/RAA-XX.XX.XXX.XXX-2 0160912162838714832-87058 520-55019f142e3a393a5e332 6a7dab34865fc6a09f901365a 9162781febf36eaa31d6-N/A- N/A-20160902113113792836

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

To the Commissioner for Trademarks:

MARK: AUTODUEL

SERIAL NUMBER: 85940537

Original Correspondence Address :

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
PO BOX 18957
AUSTIN Texas 78760-8957
US
512-447-7866
512-447-1144
sj@sjgames.com;elisabeth@sjgames.com

By submission of this request, the undersigned hereby APPOINTS the following new attorney: In addition, any additional previously-appointed attorneys that are currently listed in the application are replaced with the new "Other Appointed Attorneys" listed below.

Newly Appointed Attorney:

Richard J. Groos
King & Spalding LLP
401 Congress Avenue, Suite 3200
Austin, Texas 78701
United States
512.457.2018
512.457.2100
aotrademark@kslaw.com

Other Appointed Attorneys:

Sheri M. Hunter, Brandon M. Ress, Kristine Waddell and any other attorneys with the law firm

The following is to be used as the correspondence address:

Richard J. Groos
King & Spalding LLP
401 Congress Avenue, Suite 3200
Austin, Texas 78701
United States

512.457.2018
512.457.2100
aotrademark@kslaw.com;emolson@kslaw.com

Signature: /Philip J Reed/ Date: 09/12/2016

Signatory's Name: Philip J Reed

Signatory's Position: CEO

Serial Number: 85940537

Internet Transmission Date: Mon Sep 12 16:28:38 EDT 2016

TEAS Stamp: USPTO/RAA-XX.XX.XXX.XXX-2016091216283871

4832-87058520-55019f142e3a393a5e3326a7da

b34865fc6a09f901365a9162781febf36eaa31d6
-N/A-N/A-20160902113113792836

Side - 1



NOTICE OF ABANDONMENT
MAILING DATE: Nov 28, 2014

The trademark application identified below was abandoned because the applicant's response failed to meet the relevant statutory and/or regulatory requirements.

SERIAL NUMBER: 85940537
MARK: AUTODUEL
OWNER: Steve Jackson Games Incorporated

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL
U.S POSTAGE
PAID

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
PO BOX 18957
AUSTIN , TX 78760-8957

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85940537 MARK: AUTODUEL	 *85940537*
CORRESPONDENT ADDRESS: STEVE JACKSON GAMES INCORPORATED STEVE JACKSON GAMES INCORPORATED PO BOX 18957 AUSTIN, TX 78760-8957	CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/index.jsp
APPLICANT: Steve Jackson Games Incorporated	
CORRESPONDENT'S REFERENCE/DOCKET NO : N/A CORRESPONDENT E-MAIL ADDRESS:	

NOTICE: APPLICATION ABANDONED

ISSUE/MAILING DATE:

The above-referenced application is abandoned because applicant failed to file a complete response to the nonfinal Office action dated 9/11/2013. See 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a); TMEP §§718.02, 718.03, (b). That is, applicant's 4/3/14 response was not legally sufficient for the reason specified below.

Applicant's response is incomplete because it was not properly signed and applicant did not provide a properly signed response that addresses all the issues raised in the outstanding Office action within the time period specified in the notice of incomplete response dated 5/1/4.

Applicant may respond by filing a petition to the Director to request a reversal of the decision to abandon the application. TMEP §§715.03(a)(2)(D), 718.03(b), 1713.01-.02; see 37 C.F.R. §2.146(a)(3). The petition must be filed within two months of the date of issuance of this letter and may be filed online at http://www.uspto.gov/trademarks/teas/petition_forms.jsp. See 37 C.F.R. §§2.66(a)(1), 2.146(d); TMEP §§1705.04, 1714.01(a), (d). A \$100 fee for such a petition is required. See 37 C.F.R. §2.6(a)(15).

/John M. C. Kelly/
United States Patent and Trademark Office
Trademark Examining Attorney
Law Office 119
571-272-9412
john.kelly@uspto.gov

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85940537

MARK: AUTODUEL

85940537

CORRESPONDENT ADDRESS:

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
PO BOX 18957
AUSTIN, TX 78760-8957

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Steve Jackson Games Incorporated

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

ISSUE/MAILING DATE:

STRICT DEADLINE TO RESPOND TO THIS LETTER: To avoid abandonment of applicant's trademark application, the USPTO must receive either a properly signed response or an explanation of the signer's legal authority to bind or represent applicant within (1) thirty (30) days of the date of issuance of this letter, or (2) the time remaining in the six-month period for responding to the previous Office action, whichever is longer.

NOTICE OF INCOMPLETE RESPONSE

The problem with applicant's response : Applicant filed a response on 4/3/2014 that appears to have been improperly signed by a person with no legal authority to bind or represent applicant. *See* 37 C.F.R. §§2.62(b), 2.193(e)(2). The USPTO cannot accept an improperly signed response; therefore, the contents will not be reviewed. *See* 37 C.F.R. §§2.62(b), 2.193(e)(2); TMEP §§712, 712.03, 718.03.

The only parties who can properly sign responses are as follows: (1) the individual applicant(s); (2) someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner); or (3) an authorized attorney. 37 C.F.R. §§2.62(b), 2.193(e)(2); TMEP §§611.03(b), 712. In the present case, the response was improperly signed by "Elisabeth B Zakes" because she is identified as a "Trademark and Copyright Administrator." Thus, the signer is presumed to be unauthorized to represent an applicant because she has not been identified as an officer of the applicant corporation and therefore does not appear to have legal authority to bind or represent the applicant.

What applicant must do to fix the problem: Applicant must resubmit the entire response, signed by a proper party, or provide an explanation of the signer's legal authority to bind or represent applicant, as explained more fully below. *See* 37 C.F.R. §§2.17(b)(2), 2.62(b), 2.193(e)(2). If submitting a newly signed response, applicant must also explicitly address and respond to all the issues raised in the outstanding Office action dated 9/10/2013. *See* 37 C.F.R. §2.65(a); TMEP §718.03. The USPTO must receive a properly signed response or explanation *within (1) thirty (30) days of the date of issuance of this letter, or (2) the time remaining in the six-month period for responding to the previous Office action, whichever is longer.* *See* 37 C.F.R. §§2.62(a), 2.65(b); TMEP §§712.03, 718.03(b).

Applicant is encouraged to respond online via the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/trademarks/teas/index.jsp>. To respond via TEAS, applicant must either (1) complete the entire response form again, responding to all issues raised in the outstanding Office action; or (2) provide an explanation as to the signer's authority in the "miscellaneous statement" field in the TEAS response form. In the alternative, applicant may respond by fax at 571-273-9412.

If the outstanding Office action was a final Office action, please note that the granting of additional time to perfect a response does not extend the time for filing an appeal to the Trademark Trial and Appeal Board or a petition to the Director under 37 C.F.R. §2.63(b). TMEP §718.03(b). An applicant must file a notice of appeal or petition within six months of the issuance date of a final action. 15 U.S.C. §1062(b); 37 C.F.R. §§2.64(b), 2.142(a).

What happens if the USPTO does not receive a properly signed response within the specified time period: If applicant does not properly respond within the specified time period, this application will be abandoned because applicant filed an incomplete response. 37 C.F.R. §2.65(a); TMEP §§715.03(a)(2)(E), 718.03. In such case, applicant may file a petition to the Director to request a reversal of the decision to abandon the application. TMEP §§718.03(b), 1713.01-.02; *see* 37 C.F.R. §2.146(a)(3). The petition must be filed within two months of the date of issuance of the notice of abandonment and may be filed online at http://www.uspto.gov/trademarks/teas/petition_forms.jsp. *See* 37 C.F.R. §§2.66(a)(1), 2.146(d); TMEP §§1705.04, 1714.01(a), (d). A \$100 fee for such a petition is required. *See* 37 C.F.R. §2.6(a)(15).

GUIDELINES FOR SIGNING RESPONSES

As stated above, where an applicant is not represented by an attorney who may practice before the USPTO, the response must be signed by the individual applicant or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). *See* 37 C.F.R. §2.193(e)(2)(ii); TMEP §§611.03(b), 611.06(b)-(h), 712.01. In the case of joint applicants, all must sign. 37 C.F.R. §2.193(e)(2)(ii); TMEP §611.06(a).

Where an applicant is initially represented by an attorney, the attorney must sign the response. 37 C.F.R. §2.193(e)(2)(i); TMEP §§611.03(b), 712.01. The only attorneys who may sign responses and otherwise practice before the USPTO in trademark matters are (1) attorneys in good standing with a bar of the highest court of any U.S. state, the District of Columbia, Puerto Rico, and other federal territories and possessions of the United States; and (2) Canadian agents/attorneys who represent applicants located in Canada and (a) are registered with the USPTO and in good standing as patent agents or (b) have been granted reciprocal recognition by the USPTO. *See* 37 C.F.R. §§2.17(e), 2.62(b), 11.1, 11.5(b)(2), 11.14(a), (c); TMEP §§602, 712.01. Attorneys who fail to meet these requirements, as well as non-attorneys, are generally not permitted to represent applicants in trademark matters before the USPTO; and thus, they may not sign responses. *See* 5 U.S.C. §500(b), (d); 37 C.F.R. §11.14(a)-(c), (e); TMEP §§602, 602.02, 608.01.

In addition, the proper signatory must personally sign or personally enter his or her electronic signature. *See* 37 C.F.R. §2.193(a), (e)(2); TMEP §§611.01(b), 611.02. The name of the signatory must also be printed or typed immediately below or adjacent to the signature, or identified elsewhere in the filing. 37 C.F.R. §2.193(d); TMEP §611.01(b).

RESPONSE GUIDELINES

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and email technical questions to TEAS@uspto.gov.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

Because of the legal technicalities and strict deadlines involved in the USPTO application process, applicant may wish to hire a private attorney specializing in trademark matters to represent applicant in this process and provide legal advice. Although the undersigned trademark examining attorney is permitted to help an applicant understand the contents of an Office action as well as the application process in general, no USPTO attorney or staff is permitted to give an applicant legal advice or statements about an applicant's legal rights. TMEP §§705.02, 709.06.

For attorney referral information, applicant may consult the American Bar Association's Consumers' Guide to Legal Help at <http://www.abanet.org/legalservices/findlegalhelp/home.cfm>, an attorney referral service of a state or local bar association, or a local telephone directory. The USPTO may not assist an applicant in the selection of a private attorney. 37 C.F.R. §2.11.

/John M. C. Kelly/
United States Patent and Trademark Office
Trademark Examining Attorney
Law Office 119
571-272-9412

john.kelly@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Trademark Snap Shot Amendment & Mail Processing Stylesheet
(Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

SERIAL NUMBER	85940537	FILING DATE	05/23/2013
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KELLY, JOHN M	L.O. ASSIGNED	119

PUB INFORMATION

RUN DATE	04/04/2014		
PUB DATE	N/A		
STATUS	616-REVIVE-AWAITING FURTHER ACTION		
STATUS DATE	04/03/2014		
LITERAL MARK ELEMENT	AUTODUEL		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	AUTODUEL
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Steve Jackson Games Incorporated
ADDRESS	P.O. Box 18957 Austin, TX 78760
ENTITY	03-CORPORATION

CITIZENSHIP	Texas
GOODS AND SERVICES	
INTERNATIONAL CLASS	009
DESCRIPTION TEXT	Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games

GOODS AND SERVICES CLASSIFICATION							
INTERNATIONAL CLASS	009	FIRST USE DATE	01/06/2005	FIRST USE IN COMMERCE DATE	01/06/2005	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS	
CHANGE IN REGISTRATION	NO
PSEUDO MARK	AUTO DUEL

PROSECUTION HISTORY				
DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
04/03/2014	NREV	O	NOTICE OF REVIVAL - MAILED	014
04/03/2014	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	013
04/03/2014	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	012
04/03/2014	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	011
04/03/2014	PETG	O	PETITION TO REVIVE-GRANTED	010
04/03/2014	PROA	I	TEAS PETITION TO REVIVE RECEIVED	009
03/31/2014	MAB2	O	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	008
03/29/2014	ABN2	O	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	007
09/11/2013	CNRT	F	NON-FINAL ACTION MAILED	006
09/10/2013	CNRT	R	NON-FINAL ACTION WRITTEN	005
09/10/2013	DOCK	D	ASSIGNED TO EXAMINER	004
06/05/2013	MPMK	O	NOTICE OF PSEUDO MARK MAILED	003
06/04/2013	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
05/27/2013	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION	
ATTORNEY	NONE
CORRESPONDENCE ADDRESS	STEVE JACKSON GAMES INCORPORATED STEVE JACKSON GAMES INCORPORATED PO BOX 18957 AUSTIN, TX 78760-8957
DOMESTIC REPRESENTATIVE	NONE

AUTODUEL

Side - 1



NOTICE OF REVIVAL
MAILING DATE: Apr 3, 2014

The trademark application identified below has been revived to pending status. The application file will be forwarded to the appropriate section of the Office for further processing.

To verify the status and location of your application, please wait approximately three weeks and check the USPTO website at <http://tarr.uspto.gov/> or call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 85940537
MARK: AUTODUEL(STANDARD CHARACTER MARK)
OWNER: Steve Jackson Games Incorporated
REVIVAL DATE: Apr 3, 2014

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL
U.S POSTAGE
PAID

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
PO BOX 18957
AUSTIN, TX 78760-8957

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85940537
LAW OFFICE ASSIGNED	LAW OFFICE 119
DATE OF NOTICE OF ABANDONMENT	03/31/2014
PETITION	
PETITION STATEMENT	Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional. The signatory did not receive the Office action prior to the expiration of the six-month response period, and requests the USPTO to revive the abandoned application and reissue the Office Action.
RESPONSE TO OFFICE ACTION	
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/85940537/large
LITERAL ELEMENT	AUTODUEL
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Digital, downloadable, or electronic media; namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/06/2005
FIRST USE IN COMMERCE DATE	At least as early as 01/06/2005
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
Digital, downloadable, or electronic media; <u>Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games;</u> namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games	
FINAL DESCRIPTION	
Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/06/2005

FIRST USE IN COMMERCE DATE	At least as early as 01/06/2005
PAYMENT SECTION	
TOTAL AMOUNT	100
TOTAL FEES DUE	100
SIGNATURE SECTION	
PETITION SIGNATURE	/Elisabeth B Zakes/
SIGNATORY'S NAME	Elisabeth B Zakes
SIGNATORY'S POSITION	Trademark and Copyright Administrator
DATE SIGNED	04/03/2014
DECLARATION SIGNATURE	/Elisabeth B Zakes/
SIGNATORY'S NAME	Elisabeth B Zakes
SIGNATORY'S POSITION	Trademark and Copyright Administrator
DATE SIGNED	04/03/2014
RESPONSE SIGNATURE	/Elisabeth B Zakes/
SIGNATORY'S NAME	Elisabeth B Zakes
SIGNATORY'S POSITION	Trademark and Copyright Administrator
DATE SIGNED	04/03/2014
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Apr 03 13:41:24 EDT 2014
TEAS STAMP	USPTO/POA-XX.XXX.XXX.XXX- 20140403134124521317-8594 0537-50070aecf9f86e09cb1d c8340faf2faf79f4574ac507a 72ec5c42f24c22ab3bead-CC- 11911-2014040313293317156 7

Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action To the Commissioner for Trademarks:

Application serial no. **85940537** AUTODUEL(Standard Characters, see <http://tsdr.uspto.gov/img/85940537/large>) has been amended as follows:

PETITION

Petition Statement

Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional. The signatory did not receive the Office action prior to the expiration of the six-month response period, and requests the USPTO to revive the abandoned application and reissue the Office Action.

RESPONSE TO OFFICE ACTION

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Digital, downloadable, or electronic media; namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/06/2005 and first used in commerce at least as early as 01/06/2005 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Digital, downloadable, or electronic media; namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games~~; Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games; ~~namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games~~

Class 009 for Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/06/2005 and first used in commerce at least as early as 01/06/2005 , and is now in use in such commerce. Applicant hereby submits one(or more) specimen(s) for Class 009 .

FEE(S)

Fee(s) in the amount of \$100 is being submitted.

SIGNATURE(S)

Signature: /Elisabeth B Zakes/ Date: 04/03/2014

Signatory's Name: Elisabeth B Zakes

Signatory's Position: Trademark and Copyright Administrator

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Elisabeth B Zakes/ Date: 04/03/2014

Signatory's Name: Elisabeth B Zakes

Signatory's Position: Trademark and Copyright Administrator

Response Signature

Signature: /Elisabeth B Zakes/ Date: 04/03/2014

Signatory's Name: Elisabeth B Zakes

Signatory's Position: Trademark and Copyright Administrator

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

RAM Sale Number: 85940537
RAM Accounting Date: 04/03/2014

Serial Number: 85940537
Internet Transmission Date: Thu Apr 03 13:41:24 EDT 2014
TEAS Stamp: USPTO/POA-XX.XXX.XXX.XXX-201404031341245
21317-85940537-50070aecf9f86e09cb1dc8340
faf2faf79f4574ac507a72ec5c42f24c22ab3bea
d-CC-11911-20140403132933171567

RAM SALE NUMBER: 85940537
RAM ACCOUNTING DATE: 20140403

INTERNET TRANSMISSION DATE:
2014/04/03

SERIAL NUMBER:
85/940537

Description	Fee Code	Transaction	Total Fees Paid
POA	7005	2014/04/03	100

Side - 1



NOTICE OF ABANDONMENT
MAILING DATE: Mar 31, 2014

The trademark application identified below was abandoned in full because a response to the Office Action mailed on Sep 11, 2013 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 85940537
MARK: AUTODUEL
OWNER: Steve Jackson Games Incorporated

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL
U.S POSTAGE
PAID

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
PO BOX 18957
AUSTIN , TX 78760-8957

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85940537

MARK: AUTODUEL

85940537

CORRESPONDENT ADDRESS:

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
PO BOX 18957
AUSTIN, TX 78760-8957

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Steve Jackson Games Incorporated

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

PRIOR-FILED APPLICATION

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no similar registered mark that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant's mark.

The filing date of pending U.S. Application Serial No. **85846846** precedes applicant's filing date. See attached referenced application. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

ISSUE that applicant must address:

- **REQUIREMENT: CLARIFY IDENTIFICATION OF GOODS**

REQUIREMENT: CLARIFY IDENTIFICATION OF GOODS

The wording "Digital, downloadable, or electronic media; namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games" in the identification of goods is indefinite and must be clarified because it uses the term "or" rather than "and", and uses a semi-colon rather than a comma after the term "media". *See* TMEP §1402.01.

An application must specify, in an explicit manner, the particular goods or services on or in connection with which the applicant uses, or has a

bona fide intention to use, the mark in commerce. *See* 15 U.S.C. §1051(a)(2), (b)(2); 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Generally, the terminology “and/or” and “or” is not sufficiently explicit language in identifications because it is not clear whether applicant is using the mark, or intends to use the mark, on all the identified goods or services. *See* TMEP §1402.03(a).

For example, “modems and/or monitors” could be read to mean “modems or monitors” and thus it is unclear which goods applicant intends to identify. Applicant could amend the identification to “modems” alone, or “monitors” alone, or “modems and monitors” if applicable. Therefore, applicant should replace “and/or” with “and” in the identification of goods or services, if appropriate, or rewrite the identification with the “and/or” deleted and the goods or services specified using definite and unambiguous language.

Applicant may adopt the following identification of goods, if accurate:

Class 9: Digital media and electronic media, namely, downloadable text and graphic files featuring rules, maps, components, and supplements for family games, board games, and roleplaying games

See TMEP §1402.01.

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO’s online searchable *U.S. Acceptable Identification of Goods and Services Manual* at <http://tess2.uspto.gov/netathtml/tidm.html>. *See* TMEP §1402.04.

An applicant may amend an identification of goods and services only to clarify or limit the goods and services; adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

RESPONSE GUIDELINES

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant’s only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant’s name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

/John M. C. Kelly/
Trademark Examining Attorney
Law Office 117
571-272-9412
john.kelly@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Sep 10, 2013

85846846

DESIGN MARK

Serial Number

85846846

Status

OPPOSITION PENDING

Word Mark

AUTODUEL

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Big Boat Interactive CORPORATION CALIFORNIA 19328 hinsdale ave
Torrance CALIFORNIA 90503

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer game software for personal computers and home video game
consoles.

Filing Date

2013/02/11

Examining Attorney

AIKENS, RONALD

Autoduel

*** User:jkelly ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	85940537[SN]
02	81	54	27	17	0:01	(Steve and Jackson)[on]
03	3	N/A	0	0	0:01	*autoduel*[bi,ti]
04	19491	N/A	0	0	0:02	*auto*[bi,ti]
05	308	N/A	0	0	0:01	*duel*[bi,ti]
06	109850	N/A	0	0	0:02	*car*[bi,ti]
07	44148	N/A	0	0	0:01	*war*[bi,ti]
08	844	N/A	0	0	0:01	(4 6) and (5 7)
09	317	0	317	287	0:01	8 not dead[ld]
10	3604	N/A	0	0	0:01	*du{v:3}*[bi,ti]
11	1315	0	1315	1134	0:01	10 not dead[ld]

Session started 9/10/2013 2:12:44 PM

Session finished 9/10/2013 3:13:01 PM

Total search duration 0 minutes 13 seconds

Session duration 60 minutes 17 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICSRS as Serial Number: 85940537

Side - 1



MAILING DATE: Jun 5, 2013
PSEUDO MARK FOR
SERIAL NUMBER: 85940537

Attorney Reference Number:

The USPTO may assign pseudo marks, as appropriate, to new applications to assist in searching the USPTO database for conflicting marks. They have no legal significance and will not appear on the registration certificate.

A pseudo mark may be assigned to marks that include words, numbers, compound words, symbols, or acronyms that can have alternative spellings or meanings. For example, if the mark comprises the words "YOU ARE" surrounded by a design of a box, the pseudo mark field in the USPTO database would display the mark as "YOU ARE SQUARE." A mark filed as "URGR8" would receive a pseudo mark of "YOU ARE GREAT."

Response to this notice is not required; however, to suggest additions or changes to the pseudo mark assigned to your mark, please e-mail TMDesignCodeComments@USPTO.GOV. You **must** reference your application serial number within your request. The USPTO will review the proposal and update the record, if appropriate. For questions, please call 1-800-786-9199 to speak to a Customer Service representative.

PSEUDO MARK: AUTO DUEL

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O.BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL
U.S POSTAGE
PAID

STEVE JACKSON GAMES INCORPORATED
STEVE JACKSON GAMES INCORPORATED
PO BOX 18957
AUSTIN , TX 78760-8957

Trademark/Service Mark Application, Principal Register

Serial Number: 85940537

Filing Date: 05/23/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85940537
MARK INFORMATION	
*MARK	AUTODUEL
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	AUTODUEL
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Steve Jackson Games Incorporated
*STREET	P.O. Box 18957
*CITY	Austin
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	78760
PHONE	512-447-7866
FAX	512-447-1144
EMAIL ADDRESS	sj@sjgames.com
WEBSITE ADDRESS	www.sjgames.com
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Texas
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
*IDENTIFICATION	Digital, downloadable, or electronic media; namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/06/2005

FIRST USE IN COMMERCE DATE	At least as early as 01/06/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT 16\859\405\85940537\xml1\ APP0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT 16\859\405\85940537\xml1\ APP0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT 16\859\405\85940537\xml1\ APP0005.JPG
SPECIMEN DESCRIPTION	Web pages showing Autoduel Quarterly magazine, Autoduel America, and GURPS Autoduel for sale as PDF
CORRESPONDENCE INFORMATION	
NAME	Steve Jackson Games Incorporated
FIRM NAME	Steve Jackson Games Incorporated
STREET	P.O. Box 18957
CITY	Austin
STATE	Texas
COUNTRY	United States
ZIP/POSTAL CODE	78760
PHONE	512-447-7866
FAX	512-447-1144
EMAIL ADDRESS	sj@sjgames.com;elisabeth@sjgames.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	No
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Elisabeth B Zakes/
SIGNATORY'S NAME	Elisabeth B Zakes
SIGNATORY'S POSITION	Trademark Administrator
DATE SIGNED	05/23/2013

Trademark/Service Mark Application, Principal Register

Serial Number: 85940537

Filing Date: 05/23/2013

To the Commissioner for Trademarks:

MARK: AUTODUEL (Standard Characters, see [mark](#))

The literal element of the mark consists of AUTODUEL.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Steve Jackson Games Incorporated, a corporation of Texas, having an address of

P.O. Box 18957

Austin, Texas 78760

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: Digital, downloadable, or electronic media; namely, text and graphic files of rules, maps, components, and supplements for family games, boardgames, and roleplaying games

In International Class 009, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 01/06/2005, and first used in commerce at least as early as 01/06/2005, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Web pages showing Autoduel Quarterly magazine, Autoduel America, and GURPS Autoduel for sale as PDF.

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

For informational purposes only, applicant's website address is: www.sjgames.com

The applicant's current Correspondence Information:

Steve Jackson Games Incorporated

Steve Jackson Games Incorporated

P.O. Box 18957

Austin, Texas 78760

512-447-7866(phone)

512-447-1144(fax)

sj@sjgames.com; elisabeth@sjgames.com (not authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Elisabeth B Zakes/ Date: 05/23/2013

Signatory's Name: Elisabeth B Zakes

Signatory's Position: Trademark Administrator

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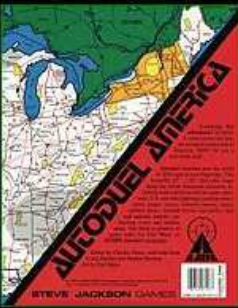
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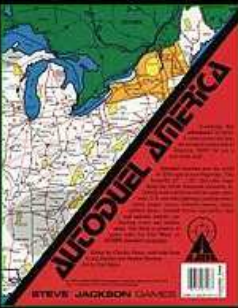
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EXHIBIT 50

Declaration of Brandon M. Ress

Brian Fargo

From: Brian Fargo
Sent: Thursday, October 22, 2015 12:50 PM
To: Jim Redner
Cc: Thomas Beekers
Subject: Re: Autoduel?

Way too early to comment....

Brian Fargo
CEO/Leader inXile
2727 Newport Blvd. #200
Newport Beach CA 92663

> On Oct 22, 2015, at 2:44 PM, Jim Redner <jimredner@therednergroupp.com> wrote:

>

> Hey Folks

>

> Any comment on Autoduel?

>

> Seems like you are sparking fires.

>

> Let me know if you don't want to comment.

>

> Jim Redner

> theRednerGroup

> 323.217.4314

> PSN: therednergroupp1

> XBLA: therednergroupp1

> www.theRednerGroup.com

>

>

> -----Original Message-----

> From: Andy Chalk [mailto:andy.chalk@pcgamer.com]

> Sent: Thursday, October 22, 2015 12:42 PM

> To: Jim Redner <jimredner@therednergroupp.com>

> Subject: Autoduel?

>

> Hey Jim, it's Andy at PC Gamer. Any chance we could get a confirmation of/comment on reports that inXile has trademarked Autoduel (and which Brian Fargo tweeted about)?

>

> Thanks!

>

> Andy

>

>

> --

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EXHIBIT 51

Declaration of Brandon M. Ress

Grocery Outlet Inc. v. Albertsons, Inc.

United States District Court for the Northern District of California

December 17, 2008, Decided; December 17, 2008, Filed

No. C 06-02173 JSW

Reporter

2008 U.S. Dist. LEXIS 101999; 2008 WL 5245962

GROCERY OUTLET INC., Plaintiff, v. ALBERTSON'S, INC., AMERICAN STORES COMPANY, LLC, and LUCKY STORES, INC., Defendants.

Notice: NOT FOR PUBLICATION

Prior History: Grocery Outlet, Inc. v. Albertson's Inc., 497 F.3d 949, 2007 U.S. App. LEXIS 18848 (9th Cir. Cal., 2007)

Core Terms

abandonment, trademark, resume, Grocery, Outlet, inventory, products, conversion, services, bona fide, registrations, brand, summary judgment, grocery store, nonuse, label, summary judgment motion, cessation, convert, banner, preliminary injunction, discontinued, rebrand, rights, plans, sales, reasonably foreseeable, sufficient evidence, ordinary course, commercial use

Counsel: [*1] For Grocery Outlet Inc., Plaintiff: Peter W Craigie, LEAD ATTORNEY, Craigie McCarthy & Clow, San Francisco, CA; Louis T. Pirkey, Susan J. Hightower, Pirkey Barber LLP, Austin, TX.

For Albertson's, Inc., American Stores Company, LLC, Lucky Stores, Inc., New Albertson's, Inc., Defendants: John A. Chatowski, Robert Ahlefeld Weikert, Nixon Peabody LLP, San Francisco, CA.

For Save Mart Supermarkets, Defendant: Perry Armstrong Irvine, LEAD ATTORNEY, Law Offices of Perry A. Irvine, Palo Alto, CA.

For New Albertson's, Inc., Counter-claimant: John A. Chatowski, Nixon Peabody LLP, San Francisco, CA.

For American Stores Company, LLC, Lucky Stores, Inc., Albertson's, Inc., New Albertson's, Inc., Counter-claimants: John A. Chatowski, Robert Ahlefeld Weikert, Nixon Peabody LLP, San Francisco, CA.

For Grocery Outlet Inc., Counter-defendant: Peter W Craigie, LEAD ATTORNEY, Craigie McCarthy & Clow, San Francisco, CA; Louis T. Pirkey, Susan J. Hightower, Pirkey Barber LLP, Austin, TX.

For Grocery Outlet Inc., Counter-defendant: Peter W Craigie, Craigie McCarthy & Clow, San Francisco, CA.

Judges: JEFFREY S. WHITE, UNITED STATES DISTRICT JUDGE.

Opinion by: JEFFREY S. WHITE

Opinion

ORDER GRANTING ALBERTSONS' MOTION FOR SUMMARY JUDGMENT

Now [*2] before the Court is the motion for summary judgment filed by Defendant Albertsons, Inc., American Stores Company, LLC and Lucky Stores, Inc, (collectively "Albertsons"). The Court finds that this matter is appropriate for disposition without oral argument and it is hereby deemed submitted. See Civ. L.R. 7-1(b). Accordingly, the hearing set for December 12, 2008 is HEREBY VACATED. Having considered the parties pleadings, the relevant legal authority, the Court hereby GRANTS Albertsons' motion for summary judgment.

BACKGROUND

Defendant Albertsons owns the rights to the trademark Lucky on grocery stores. Plaintiff, Grocery Outlet Inc. ("Grocery Outlet"), contends that it has the right to open a number of grocery outlets by the name Lucky because Albertsons has abandoned the mark. Abandonment of the mark requires both that the trademark owner has ceased to use the mark and that it has done so with an intent not to resume.

Albertsons moved for a preliminary injunction to halt the efforts of Grocery Outlet to continue to utilize the mark in their grocery services and products, and, on July 7, 2006, this Court issued a preliminary injunction. In granting the motion, the Court found that Albertsons [*3] was likely to succeed on the merits of its claim and that there was a possibility of irreparable injury. The Court found that although there was some evidence of use after the change of the name of the Lucky stores to adopt the Albertsons' name, it was merely in the sell-off of existing inventory. The Court concluded on that basis that there was a cessation of bona fide commercial use. However, the Court did find that there was sufficient evidence in the record to demonstrate that Albertsons was likely to prevail on the issue of intent not to resume. That is, the Court held that, although it found there was a cessation of use, Albertsons had offered sufficient evidence of its intent to resume use of the Lucky mark within the reasonably foreseeable future during the period of alleged nonuse. On appeal, the Ninth Circuit affirmed this Court's preliminary injunction order on the same basis. See *Grocery Outlet Inc. v. Albertson's Inc.*, 497 F.3d 949, 951 (9th Cir. 2007).

Now, Albertsons brings this motion for summary judgment on the basis both that the law has changed, rendering the sell-off of inventory to comprise bona fide commercial use, and on the

basis that the undisputed facts in [*4] the record indicate that Albertsons intended to resume use of the mark within the relatively short period of nonuse. Grocery Outlet continues to maintain that Albertsons has abandoned the Lucky mark and that there exist disputes regarding material issues of fact precluding summary judgment.

The Court sets out briefly the relevant factual history.

A. Trademark Registrations and Albertsons Acquisition.

The Lucky mark is the subject of approximately sixteen federal trademark registrations covering a variety of grocery products and supermarket and grocery store services, including U.S. Registration 1,543,066, which was registered on June 6, 1989, and has now become "incontestable." (Order dated July 7, 2006 ("Order") at 2.)

The Lucky mark is the subject of several California and Nevada state registrations, including California Trademark Renewal Registration No. 05255 for the Lucky mark for retail grocery services, granted on November 27, 1967, based upon first use in October, 1935. (*Id.*)

In 1988, Lucky Stores, Inc. was acquired by American Stores Company, Inc. The Lucky stores at that time continued to operate under the Lucky banner, and continued to sell Lucky-brand private label goods.

In [*5] 1998, Albertsons entered into a merger agreement with American Stores. The acquisition closed in June 1999. By November 1999, the former Lucky stores were converted to "Albertsons" stores. (Declaration of Gary D. Michael ("Michael Decl."), PP 6-10.)

Following the merger, Albertsons decided to rebrand all of the existing Lucky stores with the Albertsons name. (*Id.*, PP 6-7.) However, before the decision was made to rebrand the stores, Albertsons management was already discussing use of the Lucky mark on different format grocery stores. (*Id.*, PP 8-10.) To publicize the merger, Albertsons developed a "Wedding of the Century" theme for its advertising campaign, indicating that the two stores were being combined into one, with the new name of Albertsons. (Declaration of Peter W. Craigie ("Craigie Decl."), PP 5-7, Exs. D-F.) Although Albertsons never unequivocally announced that it would never again use the Lucky mark, it was clear that the new brand name under the merger for the store and its products was to be Albertsons. (Michael Decl., P 9.)

B. Evidence of Post-Conversion Use by Albertsons.

After the name change, Albertsons continued to sell Lucky brand private label merchandise in their [*6] stores for several years after the conversion from existing inventory, including newly-manufactured products to fill remaining Lucky labels and packaging. (See Order at 2-3, with record cites.) The Albertsons stores sold more than 72 million units of Lucky-branded items in 2002; they sold an excess of 290,000 units in 2001; 45,000 units in 2002. Sales continued to decline, with sale in 2003 of 39 units, 1 item in 2004, and 13 items sold in 2005. (Declaration of Mark Tate in support of Motion for PI, PP 3-9, Exs. A-C; Declaration of Mark Tate in reply for Motion for PI, P 7; and Declaration of Dennis Clark in support of Motion for PI, PP 2-3, Ex. A.)

Also, apparently at the request of counsel, during the period from conversion to the present, Albertsons created a few signs with the Lucky mark in connection with the renewal of their

trademark registrations. (Declaration of John A. Chatowski in support of Motion for PI ("Chatowski Decl."), Ex. C (deposition of Jeff Weidauer) at 21:21-23:22; 31:17-33:7; 38:8-20.)

After the store conversion, Albertsons maintained registration of the luckystores.com domain name which redirects to the Albertsons.com web site. Albertsons has also made general [*7] efforts to police the Lucky mark. (*Id.*, Ex. HH.)

C. Evidence of Albertsons' Intent to Resume Use.

From early April 2001 when Albertsons hired Larry Johnston as the company's new CEO, there were discussions to resume use of the Lucky mark. (Declaration of Pamela Powell in support of Motion for PI ("Powell Decl."), P 5; Declaration of Peter W. Craigie in opposition to Motion for PI ("Craigie Opp. Decl."), Ex. M (Romeo Cefalo deposition) at 73:4-74:25, 90:14-91:9; Declaration of Donna Robbins in support of opposition to Cross-Motion for PI ("Robbins Decl."), P 4; Declaration of Romeo Cefalo in support of Motion for PI ("Cefalo Decl."), P 10.)

In 2001, Albertsons commissioned Leo J. Shapiro & Associates to conduct research to determine residual goodwill in the Lucky mark and to track shopping behavior. (Cefalo Decl., P 11, Exs. A, B.) Albertsons then commissioned ad agency Duncan & Associates to assemble focus groups to determine why they had lost Lucky customers as a result of the name change. (Powell Decl., P 4, Ex. A.)

A June 4, 2001 study indicated that there was a great degree of customer loyalty to the Lucky name and proposed the possibility of using the Lucky name for a cost-related [*8] program. (Declaration of Philip Johnson: Lucky Brand Equity Study, Ex. B at 7-8.)

In December 2001, Donna Robbins of the Albertsons California Division was directed by CEO Johnston to examine the possibility of using the Lucky mark in a new line of stores targeted at specific ethnic markets. (Robbins Decl., PP 3-4.) In conjunction with this effort, Albertsons hired the Cultural Access Group to conduct a brand equity study to assist Albertsons in deciding between use of the Lucky name and the SuperSaver name in primarily Hispanic neighborhoods. (Powell Decl., P 6, Ex. B.) Albertsons chose to use the name SuperSaver. (Powell Decl., P 6, Ex. B.)

Plans to begin work on bringing back the Lucky mark began again in earnest in 2004. Albertsons prepared a series of presentations in conjunction with Extreme, Inc. evidencing plans to convert non-performing Albertsons' stores into warehouse-type price-impact stores in predominantly Hispanic neighborhoods in California, using the Lucky banner. (Cefalo Decl., PP 19-22, 24-26, Exs. C, E-H; Declaration of Jim Vaughan in opposition to Cross-Motion for PI, P 3, Exs. B, C; Declaration of Mike Clawson in opposition to Cross-Motion for PI ("Clawson Decl."), [*9] P 4, Ex. A at ALB01210, Ex. B at ALB01153, Ex. C at ALB01170, Ex. D at ALB01282, Ex. F at ALB01259.)

In March 2004, Albertsons created a business plan which included the proposed opening of California stores under the Lucky banner. (Cefalo Decl., PP 22-24, Ex. C, Clawson Decl., P 4, Ex. E.) Starting in mid-2005 and continuing well into 2006, employees at Albertsons were specifically tasked with the plan to convert a number of stores to the Lucky banner in ethnic format in primarily Hispanic neighborhoods. (Craigie Opp. Decl., Ex. T (Van Helden deposition)

at 55:19-25; Declaration of Peter Van Helden in support of Motion for PI ("Van Helden Decl."), P 7; Declaration of John G. Harb in support of opposition to Cross-Motion for PI ("Harb Opp. Decl."), PP 4-5, Exs. A, B.)

Plans to convert the first five stores under the Lucky banner -- three in California (Alhambra, El Centro and San Ysidro) and two in Nevada (Las Vegas) -- indicated that the stores were set to open on May 24, 2006. (Van Helden Decl., P 11; Declaration of Peter Van Helden in support of opposition to Grocery Outlet's motion, P 3; Harb Opp. Decl., Ex. B.)

D. [*10] Evidence of Intervening Factors Which Caused Delay and Ongoing Efforts.

Efforts in earlier years to rebrand or resume use of the Lucky name were halted by the grocery industry strike which lasted from October 2003 through February 2004 and consumed huge amounts of Albertsons' time and resources. (Powell Decl., PP 7-8; Cefalo Decl., PP 15- 18.) Again, in 2005, plans to open California stores under the Lucky banner were delayed as a result of discussions to sell the Albertsons company. (Cefalo Decl., P 28.)

However, since the time of the Court's decision on the preliminary injunction, Albertsons has begun operating and rebranding many stores under the Lucky name, in both California and Nevada. (Declaration of Dennis Bassler, P 7; Declaration of Justin Dye, P 12.)

E. Grocery Outlet's Use.

Grocery Outlet, an extreme value grocer operating in California, on January 23, 2006, filed with the U.S. Patent and Trademark Office an intent to use application, Serial No. 78/797,105 for the Lucky mark for "Retail grocery store services; discount grocery store services; and extreme value grocery store services." (Declaration of Bob Tiernan in support of Cross-Motion for PI, P 6.)

On April 1, 2006, Grocery [*11] Outlet opened its first grocery store under the Lucky mark. (*Id.*, P 2.) Grocery Outlet intends to open further stores under the Lucky mark and to continue to sell Lucky-branded private labels. (Chatowski Decl., Ex. T (Jonathan Kirk Wylie deposition) at 302:12-21; Tiernan Opp. Decl., P 9.)

The Court will address additional specific facts as required in the analysis.

ANALYSIS

A. Standards Applicable to Motions for Summary Judgment.

A court may grant summary judgment as to all or a part of a party's claims. Fed. R. Civ. P. 56(a). Summary judgment is proper when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A fact is "material" if the fact may affect the outcome of the case. *Id.* at 248. "In considering a motion for summary judgment, the court may not weigh the evidence or make credibility [*12] determinations, and is required to draw all inferences in a

light most favorable to the non-moving party." *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997).

A principal purpose of the summary judgment procedure is to identify and dispose of factually unsupported claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits which demonstrate the absence of a genuine issue of material fact. *Id.* at 323. Where the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. *Id.* Once the moving party meets this initial burden, the non-moving party must go beyond the pleadings and by its own evidence "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The non-moving party must "identify with reasonable particularity the evidence that precludes summary judgment." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995)) (stating [*13] that it is not a district court's task to "scour the record in search of a genuine issue of triable fact"). If the non-moving party fails to make this showing, the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

B. Law of Abandonment.

Grocery Outlet maintains that although Albertsons is the registered trademark holder for the Lucky mark, because of its nonuse of the mark, Albertsons has abandoned the Lucky trademark. Every one of Grocery Outlet's claims rests upon the premise that Albertson's abandoned the Lucky mark and therefore retain no rights to it. The essential issue, therefore, before the Court is whether there exists a dispute of material fact that the contention of abandonment may prevail. Although the issue of whether a trademark has been abandoned is generally a fact-intensive one resolved by the jury, courts have granted summary judgment on abandonment where the holder of the mark ceases to use it, but for less than three years, and the party asserting abandonment cannot establish that the markholder intended not to resume use during the nonuse period or where there has been a cessation of use for three or more consecutive years, but the [*14] undisputed facts rebut the presumption of abandonment.

To bring a trademark infringement action under the Lanham Act, a plaintiff must hold a valid trademark. Under the Lanham Act, a trademark is deemed abandoned, and thus no longer valid, "[w]hen its use has been discontinued with intent not to resume such use." 15 U.S.C. § 1127; *see also Cumulus Media, Inc. v. Clear Channel Comm., Inc.*, 304 F.3d 1167, 1173 (11th Cir. 2002) ("[A] defendant who successfully shows that a trademark plaintiff has abandoned a mark is free to use the mark without liability to the plaintiff."); *Tally-Ho, Inc. v. Coast Community College District*, 889 F.2d 1018, 1022-23 (11th Cir. 1989) (per curiam) ("Trademark ownership is always appurtenant to commercial activity. Thus, actual and continuous use is required to acquire and retain a protectible interest in a mark.") "Abandonment is trademark law's way of recognizing that trademark rights flow from use." *Cumulus Media*, 304 F.3d at 1173 (internal citations omitted).

If a mark holder stops using a mark with an intent not to resume its use, the mark is deemed abandoned and "falls into the public domain and is free for all to use ... Abandonment paves the way for future [*15] possession and property in any other person." 3 *McCarthy on Trademarks*

and Unfair Competition § 17:1 (4th ed. 2008). When a mark is abandoned, it returns to the public domain and thus, a party who successfully shows that a trademark owner has abandoned a mark is free to use the mark without liability. *Cumulus Media*, 304 F.3d at 1173.

The Lanham Act provides that "a mark shall be deemed to be 'abandoned' ...

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

15 U.S.C. §1127.

This section requires that a putative trademark infringer prove both of two separate elements: that the trademark owner has ceased using the mark in dispute, and that it has done so with an intent not to resume its use. *Prudential Ins. Co. of America v. Gibraltar Financial Corp. of California*, 694 F.2d 1150, 1156 (9th Cir. 1982) (citing *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1043-44 (2d Cir. 1980)).

Because proving [*16] the subjective intent of a trademark holder is burdensome, the Lanham Act provides both that "[i]ntent may be inferred from the circumstances" and it allows a showing of three years of consecutive nonuse to create a rebuttable presumption of intent not to resume use by stating that "[n]onuse for 3 consecutive years shall be prima facie evidence of abandonment." 15 U.S.C. § 1127.

Abandonment of a trademark must be strictly proven. *Unuson Corp. v. Built Entertainment Group, Inc.*, 2006 U.S. Dist. LEXIS 2207, 2006 WL 194052, at *4 (N.D. Cal. Jan. 23, 2006) (citations omitted). "Because a finding of abandonment works an involuntary forfeiture of rights, federal courts uniformly agree that defendants asserting an abandonment defense face a 'stringent,' 'heavy,' or 'strict' burden of proof." *Cumulus Media*, 304 F.3d 1167, 1175. While the Ninth Circuit has still not defined the "strictly proved" standard further, the majority of courts applying that standard have found that evidence of abandonment must be clear and convincing. *See Grocery Outlet*, 497 F.3d at 951 (finding that the court "need not resolve the burden of proof issue."); *see also Cash Processing Services v. Ambient Entertainment, Inc.*, 418 F. Supp. 2d 1227, 1232 (D. Nev. 2006) [*17] (citing *EH Yacht LLC v. Egg Harbor, LLC*, 84 F. Supp. 2d 556, 564 (D.N.J. 2000) (citing McCarthy at § 17:12); *Dial-A-Mattress Operating Corp. v. Mattress Madness, Inc.*, 841 F. Supp. 1339, 1355 (E.D.N.Y. 1994)). It is *not* the law that 'the slightest cessation of use causes a trademark to roll free, like a fumbled football, so that it may be pounced on by any alert opponent.'" *McCarthy on Trademarks* § 17:14 (citing *Continental Distilling Corp. v. Old Charter Distillery Co.*, 88 U.S. App. D.C. 73, 188 F.2d 614, 619, 1951 Dec. Comm'r Pat. 20 (D.C. Cir. 1950)). Because the Court finds that there was continued use through 2005 and there is undisputed evidence in the record indicating Albertsons' intent to resume use within the relevant time period, the Court finds that summary judgment is appropriate under either the clear and convincing standard of proof or the preponderance of the evidence standard. Therefore, this Court need not decide the issue of what standard of proof is appropriate.

1. Use During Relevant Time Period.

Albertsons' use of the mark from the time of its conversion in November 1999 through the present time has been somewhat limited. Albertsons made a concerted effort to remove the vestiges of the old Lucky mark when it [*18] converted the Lucky stores to the Albertsons brand.

However, there is evidence in the record that Albertsons continued to sell off inventory with the Lucky label after the conversion. The evidence demonstrates that Albertsons continued to sell Lucky private label products after the conversion. (Declaration of Mark Tate in support of Motion for PI, PP 3-9, Exs. A-C; Declaration of Mark Tate in reply for Motion for PI, P 7; and Declaration of Dennis Clark in support of Motion for PI, PP 2-3, Ex. A.) Considering the number of products dropped precipitously over the years following the 1999 conversion, the Court deduces that the sales merely marked the sell off of residual inventory, either existing product or new manufacture of product to fill pre-existing remaining labels and packaging. There is also evidence in the record, however, that, following the rebranding efforts, Albertsons ran advertisements for the Lucky-branded products and engaged in efforts to promote the products through, for instance, special store displays. (See Declaration of Carl W. Pennington, P 12.)

There is also evidence in the record demonstrating that Albertsons created signage with the Lucky mark on a few stores [*19] after the conversion. However, the evidence is persuasive that such signage was erected solely on the advice of counsel for the purpose of maintaining an active registration in the mark. Such usage is not considered active use in the ordinary course of trade. See, e.g., *Intrawest Fin. Corp. v. Western Nat'l Bank of Denver*, 610 F. Supp. 950, 958 (D. Colo. 1985); *Exxon Corp. v. Humble Exploration Co.*, 695 F.2d 96, 101 (5th Cir. 1982).

Since the time this Court issued its order granting Albertsons' preliminary injunction motion the Ninth Circuit has held that "the meaning of 'use' for the purposes of abandonment necessarily signifies 'use in commerce' and thus includes the placement of a mark on goods sold or transported." *Electro Source, LLC v. Brandess-Kalt-Aetna Group, Inc.*, 458 F.3d 931, 936 (9th Cir. 2006) (citing *Money Store v. Harriscorp Fin., Inc.*, 689 F.2d 666, 676 (7th Cir. 1982)). The court specifically rejected the argument that "attempts to merely 'rid oneself of inventory,' were not bona fide uses in the ordinary course of trade." *Id.* at 937. "Abandonment requires *complete* cessation or discontinuance of trademark use." *Electro Source*, 458 F.3d at 938. "Even a single instance [*20] of use is sufficient against a claim of abandonment of a mark if such use is made in good faith." *Id.* at 940 (quoting *Carter-Wallace, Inc. v. Procter & Gamble Co.*, 434 F.2d 794, 804 (9th Cir. 1970)). "Even a single instance of use is sufficient against a claim of abandonment of a mark if such use is made in good faith." *Id.* (quoting *Carter-Wallace, Inc. v. Procter & Gamble Co.*, 434 F.2d 794, 804 (9th Cir. 1970)).

In *Electro Source*, decided after this Court's ruling on the motion for preliminary injunction, the Ninth Circuit specifically rejected the contention that sell off of inventory does not amount to bona fide commercial use under there standards. *Id.* at 936-37. The court held that even for a business that is "on its way out, [i]f there is continued use, a prospective intent to abandon the mark or business does not decide the issue of abandonment." *Id.* at 937. Abandonment requires the "*complete* cessation or discontinuance of trademark use." *Id.* at 938 (emphasis in original) (citing 15 U.S.C. § 1127; *Doeblers' Pennsylvania Hybrids, Inc. v. Doeblner*, 442 F.3d 812, 823 (3rd Cir. 2006)).

Therefore, this Court's earlier ruling that what it deduced from the evidence as sell off of residual [*21] inventory not constituting bona fide use of a trademark can no longer hold. (See Order at 7-8 (finding that the sell-off of existing inventory does not constitute use in the ordinary course of commerce and does not therefore qualify as bona fide use of a trademark in the context of 15 U.S.C. § 1127, citing *Unuson*, 2006 U.S. Dist. LEXIS 2207, 2006 WL 194052, at *4 (finding that use of the mark in the distribution of leftover concert memorabilia to fans was insufficient use of the mark in the ordinary course of trade); see also *Anvil Brand, Inc. v. Consol. Foods Corp.*, 464 F. Supp. 474, 481 (S.D.N.Y. 1978) (holding that depleting label inventory of discontinued brand does not qualify as trademark use); but see *Person's Co., Ltd. v. Christman*, 900 F.2d 1565, 1571 (Fed. Cir. 1990) (finding that intermittent sales of inventory does not necessarily imply abandonment).) Because binding precedent on the definition of use has changed, the Court finds that the same evidence proffered in July 2006 demonstrating the sell off of inventory of Lucky products constitutes bona fide commercial use. Therefore, there is uncontested evidence in the record demonstrating that Albertsons continued to use the Lucky mark through 2005. ¹ [*22]

2. Intent to Resume Use During Relevant Period.

A concrete "intent [*23] to use" is required. *Unuson Corp.*, 2006 U.S. Dist. LEXIS 2207, 2006 WL 194052, *6 (citing *Imperial Tobacco Ltd. v. Philip*, 899 F.2d 1575, 1581 (Fed. Cir. 1990)); *Exxon Corp.*, 695 F.2d at 102-03. "To overcome the presumption arising from lack of use, '[t]he registrant must put forth evidence with respect to what activities it engaged in during the nonuse period or what outside events occurred from which an intent to resume use during the nonuse period may reasonably be inferred.'" *Id.*

The issue of intent to resume use only arises at the point of cessation of use. See *Electro Source*, 458 F.3d at 937-38 (holding that "unless the trademark use is actually terminated, the intent not to resume use prong of abandonment does not come into play.") In addition, the Lanham Act directs that intent not to resume use may be inferred from the circumstances. *Id.* However, "[s]uch an intent cannot be far-flung or indefinite; rather there must be an intent 'to resume use within the reasonably foreseeable future.'" *Natural Answers, Inc. v. SmithKline Beecham Corp.*, 529 F.3d 1325, 1329 (11th Cir. 2008) (citing *Silverman v. CBS Inc.*, 870 F.2d 40, 46 (2d Cir. 1989)).

¹ Grocery Outlet's argument that the distinction between services and products compels the opposite conclusion is unpersuasive. Where, as here, the goods and services are so closely related, the use of one is sufficient to maintain rights in the other. The intentional advertising of the Lucky-branded goods were clearly designed for customers to associate the brand with the former Lucky-branded stores and to encourage the continued association in consumers. See 3 McCarthy on Trademarks and Unfair Competition, § 17:23 at 17-44.2 (4th ed. 2008) ("[T]here is no abandonment or break in the chain of priority of use merely because use of the mark is shifted from one line of goods or services to another similar line. Even when it is the user's clear intention to cease sales of closely related goods under the mark, continuance or commencement of sales of closely related goods under the mark is not abandonment of the mark and the earlier use may be relied upon for priority purposes. The proper criterion is whether the buying public is likely to think that the new line of goods comes from the same source as the old line of goods.")

The Court has already found that Albertsons' uncontroverted evidence [*24] of intent to resume use within the reasonably foreseeable future and within the relevant time period. (See Order at 3-4.) There is evidence in the record demonstrating that Albertsons had an intent to resume use of the Lucky mark as far back as 2001. There is also sufficient evidence indicating valid reasons for delay in the implementation of those plans. The evidence establishes that Albertsons intended to resume use of the name Lucky within the "reasonably foreseeable future." See *Exxon Corp. v. Humble Exploration Co.*, 592 F. Supp. 1226, 1227 (D. Tex. 1984); see also *Silverman v. CBS, Inc.*, 870 F.2d 40, 46 (2d Cir. 1989) (holding that abandonment can be found once use has been discontinued "with an intent not to resume within the reasonably foreseeable future.") There is no evidence that at the time of conversion, Albertsons affirmatively announced its intention formally to abandon the mark for use in the grocery business. *But cf. California Cedar Products Co. and Duraflame v. Pine Mountain Corp.*, 724 F.2d 827, 831 (9th Cir. 1984) (finding the trial court did not abuse its discretion in finding abandonment effective as of date company affirmatively announced formal abandonment of [*25] mark by alerting the newspaper and by filing documents in the United States Patent and Trademark Office indicating express intention to abandon its registered trademark).

There is sufficient evidence in the record to establish that Albertsons did not act with an intent not to resume use after the 2005 sales of inventoried Lucky-branded items. There is undisputed evidence that Albertsons intended to resume use of the LUCKY mark on grocery stores both before and after the conversion. There were internal discussions of using the Lucky mark on Hispanic-themed neighborhood store or a box-type "price impact" store. (See Michael Decl., P 10.) There were significant discussions about rebranding such stores with a Lucky brand storefront as early as 2001. (See, e.g., Robbins Decl., PP 3-4; Powell Decl., PP 3-4; Declaration of Larry Johnston, PP 1-4.) In 2004, Albertsons' executive vice president decided to convert existing non-performing Albertsons' stores to warehouse-type, "price impact" stores, and planned to use the Lucky banner on the converted stores in California. (Cefalo Decl., PP 20-21; Clawson Opp. Decl., P 3; Declaration of Jim Vaughan in support of opposition to Cross-Motion for PI, [*26] P 3.) There is sufficient, undisputed and contemporaneous evidence indicating that Albertsons intended to resume use of the name prior to the last bona fide commercial uses in 2005. Therefore, the Court finds that Albertsons has not abandoned its rights to use of the Lucky trademark and summary judgment is therefore appropriate on all causes of action. Also, because Grocery Outlet is unable to demonstrate that Albertsons abandoned the Lucky mark, it has by its own admission, infringed Albertsons' trademark rights.

CONCLUSION

For the foregoing reasons, the Court GRANTS Albertsons' motion for summary judgment. A separate judgment shall issue and the Clerk is directed to close the file.

IT IS SO ORDERED.

Dated: December 17, 2008

/s/ Jeffrey S. White

JEFFREY S. WHITE

UNITED STATES DISTRICT JUDGE

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